

# RULES AND REGULATIONS

## Title 22—EDUCATION

### STATE BOARD OF EDUCATION

#### [22 PA. CODE CHS. 4, 11 AND 12]

#### Prekindergarten

The State Board of Education (Board) amends Chapters 4, 11 and 12 (relating to academic standards and assessment; student attendance; and students and student services) to read as set forth in Annex A. Notice of proposed rulemaking was published at 36 Pa.B. 2981 (June 17, 2006), with an invitation to submit written comments.

#### *Statutory Authority*

The Board acts under the authority of section 2603-B of the Public School Code of 1949 (code) (24 P.S. § 26-2603-B) and other sections of the code.

#### *Background*

The amendments to Chapters 4, 11 and 12 establish standards for prekindergarten programs that are operated by school districts or contracted by school districts with community providers. Prekindergarten programs are voluntary programs operated by many school districts for children between 3 and 4 years of age. School districts are not required to offer prekindergarten and when they do parents are not required to enroll their children in prekindergarten programs.

The Commonwealth and its school districts invest millions of taxpayer dollars each year to operate prekindergarten programs. It is critical that as this investment grows that these resources be used in a way to maximize student achievement and fully prepare children for school enrollment through high quality educational experiences. This final-form rulemaking, together with other rulemakings being considered by the Board, including Chapter 49 (relating to certification of professional personnel), assures that these investments have maximum educational benefit.

#### *Summary of Public Comments and Responses to Proposed Rulemaking*

The proposed rulemaking was published at 36 Pa.B. 2981 and was also available on the Department of Education website at [www.pde.state.pa.us](http://www.pde.state.pa.us). The Board accepted formal written comments during a 30-day public comment period that began upon publication of the proposed rulemaking.

The Board received comments from the Pennsylvania School Boards Association (PSBA); Pennsylvania Head Start Association; Early Care and Education Consortium; Beaver County Early Care & Education Council; Pennsylvania Partnerships for Children; Education Law Center; and Independent Regulatory Review Commission (IRRC).

Following is a summary of the comments and the Board's response to the comments.

#### *§ 4.13. Strategic plans.*

The Board received numerous comments regarding the proposed amendments to § 4.13. Many comments were also received when a similar proposed rulemaking to amend Chapter 4 was published at 35 Pa.B. 6107 (November 5, 2005). The Board has yet to submit final-form regulations for that regulatory package.

The Board decided to add prekindergarten strategic planning requirements to the proposed Chapter 4 amendments in the proposed rulemaking published at 35 Pa.B. 6107. The Board combined the new and previously proposed amendments in the proposed rulemaking published at 36 Pa.B. 2981. Paragraphs (12)—(14) were added to § 4.13(c).

Since the concerns raised by commentators relate primarily to the previously published Chapter 4 amendments, and not to those dealing with prekindergarten strategic planning requirements, the Board decided to revert back to the strategic planning requirements that were originally published in January 1999 and to add the new prekindergarten strategic planning requirement to those requirements.

Specific comments made by commentators regarding § 4.13 include:

*Comment:* Both PSBA and IRRC expressed concerns about language that would make school entity strategic plans an extension of Chapter 4.

*Response:* This language has been deleted.

*Comment:* PSBA expressed concerns that the regulation would only allow the strategic planning committee to make changes to the strategic plan, believing that this would diminish the authority of elected school boards.

*Response:* This language has been deleted.

*Comment:* IRRC expressed concerns about the clarity of subsection (c)(6)(i)(C), (7), (8) and (13).

*Response:* This language has been deleted.

*Comment:* The Education Law Center expressed support for the provisions that require prekindergarten programs to address how programs would coordinate with programs that serve children with disabilities.

*Response:* The Board has retained these provisions in subsection (c)(12) and (14).

*Comment:* PSBA suggested that strategic planning committees in districts that offer prekindergarten be the only ones that are required to include participation from the early childhood community.

*Response:* The Board has deleted the proposed amendments.

*Comment:* PSBA expressed concerns about language in § 4.13(d) that specifies representation on the strategic planning committee. It believes this requirement will lead to further prescriptive membership on the committee, which could improperly take responsibilities from the locally elected school board.

*Response:* The Board has deleted the proposed amendments.

*Comment:* The Pennsylvania Head Start Association expressed support for the requirements that all stakeholders be involved in assessing community needs and resources through the strategic planning requirements. The Early Care and Education Consortium also expressed a concern that planning requirements for prekindergarten programs does not require school districts to coordinate with community childcare providers, parents and others.

*Response:* The Board has retained provisions that would require school districts to offer prekindergarten to include in their plan how they will coordinate with

agencies that serve preschool children with disabilities and also address how the district will provide for a smooth transition from the home setting and early childhood care. In addition, the Board has added a requirement in § 4.20(10) (relating to prekindergarten education) that school districts consult with parents, community agencies and organizations, and childcare, early intervention and Head Start representatives when developing the prekindergarten implementation plan.

*§ 4.20. Prekindergarten education.*

*Comment:* PSBA supports language stating that school districts are not required to offer prekindergarten and, if offered, parents are not required to enroll their children in the program.

*Comment:* PSBA recommends that language be included that would make clear school districts are not obligated to provide transportation of students to prekindergarten programs.

*Response:* The Board believes it is well understood by school districts that prekindergarten students are not required to be transported to or from the program. However, the Board will address this concern in the future when it reviews Chapter 23 (relating to pupil transportation).

*Comment:* PSBA requested that language in § 4.20 be clarified to indicate that programs are to be designed for the age and varying developmental levels of the students so that the regulation is clear that not all prekindergarten students are required to have individualized education plans.

*Response:* The regulation has been revised to clarify the intent of the Board.

*Comment:* IRRC suggested that the term "attendance area" be defined to improve clarity. PSBA suggested substituting "must" for "shall" in § 4.20(3).

*Response:* A definition of "attendance area" has been added to § 4.20(3). The Board also replaced "shall" with "must."

*Comment:* The Education Law Center expressed its support for the requirement that prohibits prekindergarten programs restricted only to children with disabilities.

*Comment:* IRRC suggested that the statement in § 4.20(6) that programs of high quality ordinarily have a student/teacher ratio of 17 students for 1 teacher and 1 teacher aide in a classroom is nonregulatory language and should be deleted. PSBA suggested that the recommended class size language be included in a guideline not included in this final-form rulemaking. The Pennsylvania Head Start Association expressed that class size and supervision are critical elements of effective prekindergarten programs. They further recommended ratios as low as 15 to 2, but indicated that the 20 to 2 minimum is a vital requirement. The Pennsylvania Partnerships for Children supports the regulation that prekindergarten classes have at least 2 adults for every 20 children.

*Response:* Educational research demonstrates that class size in early childhood education matters. The Board believes that having well accepted guidance in the final-form rulemaking together with a maximum ratio of staff to students assists the regulated community in understanding that 17 is optimal but 20 is the minimally acceptable ratio.

*Comment:* IRRC suggested that the term "rigorous standard of quality" is unclear and should be defined.

*Response:* The Board has defined the term "rigorous standard of quality" in § 4.20(7)(iii).

*Comment:* PSBA suggested that language be added to allow a school district to request approval of a class size that varies from the requirements for a specific, limited period of time.

*Response:* Exceptions to this and other regulatory requirements are allowed in § 4.20(8).

*Comment:* PSBA expressed opposition to the requirement that classroom aides in prekindergarten classrooms have the same qualifications as aides in Title I schools. The Pennsylvania Head Start Association expressed support for the minimum qualifications for teacher assistants. The Pennsylvania Partnerships for Children supports the requirements for teacher assistants.

*Response:* The Board believes that research supports that a central tenet of high quality prekindergarten programs is staff/student ratio and staff quality. Since the No Child Left Behind Act of 2001 (Pub. L. No. 107-110, 115 Stat. 1425) already places similar requirements on schools that receive Federal funds, which an overwhelming majority do, the Board views this requirement as addressing a critical element essential to high quality programming that does not present a significant new burden on school districts.

*Comment:* PSBA supports the provision that allows the Secretary to approve alternative programs. However, PSBA asks why there is a requirement that school districts must complete a timeline for bringing their programs in full compliance with the program standards. PSBA expressed that the 1 year limitation on waivers is sufficient to protect students from programs of less-than high quality.

*Response:* The Board has deleted the requirement that meritorious programs include a time line to become fully compliant with the regulations.

*Comment:* The Pennsylvania Head Start Association and Pennsylvania Partnership for Children both recommended that a requirement be added that school district officials develop their prekindergarten implementation plans in consultation with parents, including children with disabilities, and representatives of early intervention and community preschool programs.

*Response:* The Board has added this language to § 4.20(10).

*§ 4.41(e). Scheduling.*

*Comment:* The Early Care and Education Consortium expressed a concern that consideration is not provided for appropriate wrap-around care for the full day needs of working parents. They suggested requiring school districts to offer only 2 1/2 hours of instruction to coordinate with community-based private early care and education programs to meet this need.

*Response:* The Board believes that by requiring school districts to consult with representatives of childcare, parents and others when developing the prekindergarten implementation plan, the needs of working parents can be addressed to the extent possible within the span of authority of the school district.

*Comment:* IRRC suggested that use of “alternative prekindergarten program” in § 4.41(e) and “meritorious program” in § 4.20(8) is confusing and that one term should be used. In addition, IRRC suggested that, if applicable, reference should be made to the term “meritorious program” as defined in § 11.8 (relating to definitions), or if that does not apply, that the term be defined in Chapter 4.

*Response:* The Board has revised the final-form rulemaking to use the term “meritorious” throughout. The Board believes § 4.20(8) adequately describes the conditions required to be considered a meritorious program.

#### § 11.1. School term.

*Comment:* IRRC questioned how a prekindergarten program that operates only 3 or 4 days a week would meet the requirement. IRRC also suggested that the sentence include the phrase “prekindergarten, when offered.”

*Response:* The Board has revised the language in §§ 11.1 and 11.3 (relating to minimum required hours) to clarify that the days and hours of instruction may be waived for meritorious programs. The phrase “prekindergarten, when offered” has been added to § 11.1.

#### § 12.1(c). Free education and attendance.

*Comment:* IRRC suggested that since “prekindergarten” is defined in § 12.16 (relating to definitions), the clause that includes a portion of the definition in subsection (c) should be deleted.

*Response:* The Board has withdrawn the proposed amendment to § 12.1(c).

#### § 12.41. Student services.

*Comment:* IRRC suggested defining “nutritional services or referrals.”

*Response:* The Board has inserted a list of nutritional programs and services to be offered by the school district or referrals made by the school district.

#### Miscellaneous

*Comment:* PSBA commented that, since the Accountability Block Grant funding, which currently provides school districts with resources to operate prekindergarten programs, is not a permanent appropriation, in the event that the appropriation was not continued, school districts would be left to cover the entire cost of prekindergarten programs. Thus, PSBA said, there is a potential for costs to be incurred by local school districts.

*Response:* The Governor’s Budget for 2006-07 projects appropriations for the Accountability Block Grant to continue through at least 2010-11. The Board must base its policies on facts, not conjecture, and must assume that these funds will continue through at least 2010-11 since no official documents have indicated otherwise.

*Comment:* IRRC suggested that one term for school organization (for example, school entity, school district and area vocational technical school) be used throughout this final-form rulemaking for purposes of clarity and consistency.

*Response:* The terms for the various type of school organizations used in this final-form rulemaking were carefully selected to assign specified provisions to selective types of schools. These terms are established by the code. The Board intentionally applies selected provisions for reasons established by both statute and policy. Therefore, the Board will retain the use of terms as originally proposed.

*Comment:* The Pennsylvania Head Start Association and the Pennsylvania Partnerships for Children suggested addressing in this final-form rulemaking the phasing-in of minimum qualifications for teachers in prekindergarten programs operated by a community provider under contract from a school district since language included in the proposed amendments to Chapter 49 was questioned by IRRC.

*Response:* Minimum qualifications for teachers in school district contracted community provider operated prekindergarten programs are included in § 4.20(11).

*Comment:* The Beaver County Early Care & Education Council expressed its support of the proposed rulemaking.

*Comment:* The Education Law Center expressed its support for the proposed rulemaking. It especially supports the provisions that ensure that children with disabilities have access to and learning support in prekindergarten programs.

#### Effective Date

The final-form rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

#### Sunset Date

In accordance with its policy and practice regarding regulations, the Board will review the effectiveness of these chapters after 4 years. Therefore, no sunset date is necessary.

#### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 2, 2006, the Board submitted a copy of the notice of proposed rulemaking, published at 36 Pa.B. 2981, to IRRC and the Chairpersons of the House and Senate Committees on Education for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 15, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 16, 2006, and approved the final-form rulemaking.

#### Contact Person

The official responsible for information on this final-form rulemaking is Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-3787, TDD (717) 787-7367.

#### Affected Parties

The final-form rulemaking will affect the students and professional employees of public schools in this Commonwealth.

#### Fiscal Impact and Paperwork Requirements

Since this final-form rulemaking is consistent with existing program grant standards for prekindergarten programs supported through the Accountability Block Grant program, schools should already be in compliance with this final-form rulemaking. Therefore, the incurrance of additional operating program costs beyond those specified in the regulations would be at the discretion of

the school district and its elected board of directors. Complying with this final-form rulemaking should not add costs beyond those necessary to regular program operation.

*Effective Date*

The final-form rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

*Findings*

The Board finds that:

(1) Public notice of the intention to adopt this final-form rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) The final-form rulemaking is necessary and appropriate for the administration of the code.

*Order*

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 22 Pa. Code Chapters 4, 11 and 12, are amended by amending §§ 4.3, 4.41, 11.8 and 12.42 and by adding § 11.9 to read as set forth at 36 Pa.B. 2981; and by amending §§ 4.13, 11.1, 11.3, 12.16 and 12.41 and by adding § 4.20 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

*(Editor's Note:* The Board has withdrawn the proposal to amend § 12.1, which was included in the proposed rulemaking at 36 Pa.B. 2981.)

(b) The Executive Director will submit this order, 36 Pa.B. 2981 and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Executive Director of the Board shall certify this order, 36 Pa.B. 2981 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order is effective upon publication in the *Pennsylvania Bulletin*.

JIM BUCKHEIT,  
*Executive Director*

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 7353 (December 2, 2006).)

**Fiscal Note:** Fiscal Note 6-301 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 22. EDUCATION**

**PART I. STATE BOARD OF EDUCATION**

**Subpart A. MISCELLANEOUS PROVISIONS**

**CHAPTER 4. ACADEMIC STANDARDS AND ASSESSMENT**

**ACADEMIC STANDARDS AND PLANNING**

**§ 4.13. Strategic plans.**

(a) Every school district (including charter schools) shall develop and file with the Department a strategic plan once every 6 years and review that plan for revision at the mid-point according to an implementation schedule developed by the Department under § 4.83 (relating to

implementation schedule). A school district plan shall incorporate appropriate components of the plan submitted under subsection (b) by an AVTS in which the district participates. In the development of a strategic plan, a school district (including charter schools) will, upon request, receive technical assistance from the Department.

(b) Every AVTS, in conjunction with and with the approval of the majority of its participating school districts, shall develop and file with the Department a strategic plan once every 6 years and review that plan at the mid-point according to an implementation schedule developed by the Department under § 4.83. The strategic plan shall incorporate appropriate components of the strategic plan submitted under subsection (a) by participating districts. In the development of the strategic plan, an AVTS will, upon request, receive technical assistance from the Department.

(c) The strategic plan must be based upon an analysis of internal and external needs, leading to the specifications of priorities for action and action plans. The requirements in subsections (a) and (b) to develop plans every 6 years and revisions every 3 years does not limit a school entity's ability to conduct a continuous strategic planning process. The plan must include the following components in addition to others the school entity determines to include:

(1) A mission statement.

(2) A listing of the school district's (including a charter school) or AVTS's educational and organizational goals as they relate to student achievement and high school graduation requirements.

(3) A description of academic standards for student achievement, which must be consistent with those under § 4.12 (relating to academic standards).

(4) The planned instruction to be offered and the instructional and assessment practices to be used to strive for the academic goals and attain academic standards under paragraph (3) and the high school graduation requirements under § 4.24 (relating to high school graduation requirements).

(5) An assessment plan under § 4.52 (relating to local assessment system) designed to determine the degree to which students are achieving academic standards under paragraph (3), including descriptions of methods and measures used to determine achievement, how information from the assessments shall be used to assist students who have not demonstrated attainment of the academic standards at a proficient level or higher and how information from the assessments shall be made available to the public.

(6) A plan for improving students' achievement, including specific, measurable goals for student growth and plans (including those listed in this section) that are designed to attain students' achievement goals. Achievement goals must demonstrate a connection to the academic standards under § 4.12, including annual improvement goals for student scores on State and local assessments.

(7) The professional development plan under section 1205.1 of the School Code (24 P.S. § 12-1205.1) and § 49.17 (relating to continuing professional development) and the induction plan under § 49.16 (relating to approval of induction plans).

(8) A description of the school district's (including a charter school) or AVTS's organization and organizational goals and their relationship to differing student needs within the school district's (including a charter school) or AVTS's goals under paragraph (2) and the attainment of academic standards under paragraph (3).

(9) A description of the professional personnel, school library, classroom and other resources the school district (including a charter school) or AVTS plans to devote to the attainment of academic standards.

(10) A brief description of the process used to develop the strategic plan, including a list of persons involved in its development.

(11) A plan for additional instructional opportunities for students not achieving at the proficient level, including identification procedures, alternate instructional strategies, monitoring of assessment procedures and opportunities for extended learning time.

(12) A description of how the school district will accomplish coordination with community operated infant and toddlers and preschool early intervention programs and the following before or after school programs and services for all grade levels, including prekindergarten, if offered, through grade 12:

- (i) Child care.
- (ii) After school programs.
- (iii) Youth workforce development programs.
- (iv) Tutoring.

(13) A school district that offers prekindergarten shall describe the prekindergarten program and explain how the district will coordinate with agencies that serve preschool age children with disabilities. The plan must address coordination activities designed to identify and serve children with disabilities and the supports and accommodations available to ensure both physical and programmatic access. The plan must address prekindergarten programs operated directly by the school district and those operated by community agencies under contract from the school district.

(14) A brief description of how the school district will provide for a smooth transition for prekindergarten students, when prekindergarten is offered, from the home setting and any early childhood care or education setting the students attend, to the school setting. This description must include how the district will coordinate with the infants and toddlers and preschool early intervention agencies that serve children with disabilities to ensure a smooth transition for those children to the school district's prekindergarten program.

(d) Strategic plans shall be developed through active participation by parents, students, school directors, teachers, school administrators, other school personnel and business and community representatives. Teacher representatives shall be chosen by teachers; administrative representatives shall be chosen by the administrative personnel; and school director representatives shall be chosen by the board of the school district or AVTS.

(e) Prior to its approval by the board of directors, the strategic plan and revisions of it shall be made available for public inspection in the school district's or AVTS's offices and nearest public library until the next regularly scheduled board meeting or a minimum of 28 days whichever comes first. The plan shall be filed with the Department after it is recommended by the school superintendent of record and is approved by the school dis-

trict's or AVTS's board of directors. If the board of directors alters the proposed strategic plan developed under subsection (d), it shall consult with the committee which developed it to reach the greatest possible consensus prior to its submission and shall include any minority report which is developed.

(f) A locally approved strategic plan shall remain in effect until it is superseded by a locally approved revision or a new strategic plan developed under this section.

## CURRICULUM AND INSTRUCTION

### § 4.20. Prekindergarten education.

School districts are not required to offer a prekindergarten program, and parents are not required to enroll their children in those programs if offered. Prekindergarten programs shall be designed so that students complete the program prior to their reaching the school district's entry age for kindergarten. The program, when offered, must provide a comprehensive program appropriate for the age and varying developmental levels of the students; be based on how young children develop and learn; include instruction to support each child's development in the areas of approaches to learning—creative expression, language and literacy, math, logic and science, social-personal development and physical development and health—and must be open to children with disabilities.

(1) The Secretary will provide academic standards, appropriate for early learning at the prekindergarten level, as guidance for the use of school districts that offer prekindergarten programs.

(2) Curriculum and instruction in the prekindergarten program must be standards-based.

(3) Prekindergarten programs may be offered to all 3 and 4 year olds or may be targeted to children who are most in need of prekindergarten services who reside in the district. Targeted programs may serve children who are at risk of school failure because of limited English proficiency, community factors, economic disadvantage, but may not exclude or be limited exclusively to children with disabilities. If a program is limited to an attendance area, children with disabilities must live in that attendance area to participate in the program. An attendance area is the geographic area within a school district designated by the school board for the purpose of assigning students to a school.

(4) The Secretary will issue guidance to school districts on developmentally appropriate curriculum, instruction and assessments for prekindergarten.

(5) Each school district that provides prekindergarten shall design an assessment system that includes prekindergarten and uses a variety of assessment strategies, which may include those listed in § 4.52(d) (relating to local assessment system), as appropriate.

(6) Prekindergarten programs must have a student/teacher ratio of no more than 20 students for one teacher and one teacher aide in a classroom (2 adults in a classroom for every 20 students). Programs of high quality ordinarily have a student/teacher ratio of 17 students for one teacher and one teacher aide in a classroom (2 adults for every 17 students). Programs operating under contract with community providers must comply with staffing qualifications as required by § 49.85(c) (relating to limitations).

(7) Beginning in the 2009-2010 school year, a teacher aide in a prekindergarten program shall meet one of the following criteria:

- (i) Completion of a least 2 years of postsecondary study.
- (ii) Possession of an associate's degree or higher.
- (iii) Ability to meet a rigorous standard of quality and demonstration through a formal State or local academic assessment of knowledge in and ability to assist in instructing reading, writing and mathematics. A rigorous standard of quality includes a demonstration of competence in basic literacy skills, including the ability to speak and write standard English and instruction of prekindergarten students in the acquisition of the knowledge, skills and abilities described in the early learning standards issued under paragraph (1).

(8) The Secretary may approve a meritorious prekindergarten program that does not meet all regulatory requirements for the program when, in the Secretary's judgment, the program provides high quality learning opportunities for students and meets the following conditions:

- (i) The school district has submitted to the Secretary a written request that provides justification for the waiver and includes a description of how the meritorious program will provide high quality learning opportunities for students.
  - (ii) The approval of the meritorious prekindergarten program is valid only for 1 school year.
  - (iii) Requests for renewals include evidence of positive student outcomes.
- (9) A school district may make individual exceptions to the age of prekindergarten students based upon local policy to permit the enrollment of children under 3 years of age and 5 years of age or older.

(10) A school district planning to offer or contract with a community agency to offer a prekindergarten program shall develop an implementation plan that describes the program and its target population. The plan must identify the facilities, staffing needs and other resources that it will use to deliver the program. The school district shall consult with parents, community agencies and organizations, and child care, early intervention and head start representatives when developing the implementation plan. In years subsequent to the initial year of the program, the implementation plan must become part of the strategic plan described in § 4.13 (relating to strategic plans) and included in the mid-term review and annual updates described in § 4.13.

(11) School district contracted prekindergarten programs operated by a community provider shall provide a lead teacher for each classroom who meets the following minimum qualifications:

- (i) An associate's degree or greater in early childhood education or child development.
- (ii) For programs operating before December 16, 2006, lead teachers shall possess a bachelor's degree and early childhood certificate as provided in § 49.85(a) (relating to limitations) on or before December 16, 2011.
- (iii) For programs contracted after December 16, 2006, lead teachers shall possess a bachelor's degree and early childhood certificate as provided in § 49.85(a) within 5 years from the date students first attend the prekindergarten program.

**CHAPTER 11. STUDENT ATTENDANCE  
GENERAL PROVISIONS**

**§ 11.1. School term.**

Public prekindergartens, when offered, and kindergartens, elementary and secondary schools shall be kept open each school year for a minimum of 180 days of instruction for students. Days may not be counted as days taught on which the schools are closed, and time may not be counted as a student session for an activity to which admission is charged. However, when a meritorious educational program warrants, the Secretary may, upon request, approve a school term containing a minimum of 990 secondary or 900 elementary and 450 kindergarten hours of instruction as the equivalent of 180 school days. A Prekindergarten Program may be exempted from this requirement when approval as a meritorious prekindergarten is granted as provided in § 4.20(8) (relating to prekindergarten education).

**§ 11.3. Minimum required hours.**

(a) Minimum hours of instruction time for students shall be as follows:

<i>Grade</i>	<i>Hours</i>
PreK—K	2 hours, 30 minutes, each day of the school term, unless exempted from the minimum hours of instructional time under § 11.1 (relating to school term)
K	2 hours, 30 minutes, each day of the school term
1—6	900 hours for the school term
7—12	990 hours for the school term

(b) Schools with grade level configurations that differ from those outlined in subsection (a) (for example, K-8), are required to meet the minimum annual hourly requirements for each specified grade level.

**CHAPTER 12. STUDENTS AND STUDENT SERVICES**

**STUDENT RIGHTS AND RESPONSIBILITIES**

**§ 12.16. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Corporal punishment*—A form of physical discipline that is intended to cause pain and fear and in which a student is spanked, paddled or hit on any part of the body with a hand or instrument.

*Governing board*—The board of school directors of a school district, joint school committee of a joint school or joint vocational school, intermediate unit board of directors, or the board of trustees of a charter school or cyber-charter school.

*Prekindergarten*—A program operated by a school district or by a community agency under contract from a school district that is open to children who are at least 3 years of age and completed prior to the school district's entry age for kindergarten, unless individual exceptions to the age requirements are made by the school district.

*School entity*—A local public education provider (for example—public school, charter school, cyber-charter school, area vocational-technical school or intermediate unit).

*Student assistance program*—A systematic process designed to assist school personnel to identify issues, including alcohol, drugs and others, which pose a barrier to a student's learning and school success. Student assistance is a systematic process using effective and accountable professional techniques to mobilize school resources to remove the barriers to learning, and, when the problem is beyond the scope of the school, to assist the parent and the student with information so they may access services within the community.

*Student services*—Services designed by a school entity to support the instructional program and to help students attain their educational and career goals.

(i) Services may include school guidance counseling, health services (under Article XIV of the Public School Code of 1949 (24 P. S. §§ 14-1401—14-1423) and 28 Pa. Code Chapter 23 (relating to school health)), psychological services, social work and home and school visitor services.

(ii) School entities may supplement, but may not supplant, these services through school-based, school-linked, or coordinated services provided by locally available social and human services agencies.

### SERVICES TO STUDENTS

#### § 12.41. Student services.

(a) Each school entity shall prepare a written plan for the implementation of a comprehensive and integrated K-12 program of the student services based on the needs of its students. The plan shall be prepared and revised in accordance with the time frames and procedures described in §§ 4.13(a), (b), (d), (e) and (f) (relating to strategic plans). Services offered by community agencies in public schools shall be coordinated by and under the general direction of the school entity. The plan must include policies and procedures for emergency care and administration of medication and treatment under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144) and guidelines issued by the Department of Health. The Department of Health guidelines are available from the Division of School Health, Department of Health, P. O. Box 90, Harrisburg, Pennsylvania 17108. A school district that operates a prekindergarten program shall address its prekindergarten program in its strategic plan.

(b) Though the variety of student services offered will differ from school to school depending upon its size and the needs of its students, the following categories of services shall be provided by each school entity in planning its student services:

(1) Developmental services for students that address their developmental needs throughout their enrollment in school. Developmental services include guidance counseling, psychological services, health services, home and school visitor services and social work services that support students in addressing their academic, behavioral, health, personal and social development issues. When prekindergarten is offered, these services must include nutritional services or referrals. Nutritional services include:

- (i) Federal and State funded school meal programs.
- (ii) Special Supplemental Feeding Program for Women, Infants and Children (WIC).
- (iii) Food Stamp Program.
- (iv) Pennsylvania Fresh Foods Program.

(v) Local food and nutrition services for children and families.

\* \* \* \* \*

[Pa.B. Doc. No. 06-2447. Filed for public inspection December 15, 2006, 9:00 a.m.]

## Title 34—LABOR AND INDUSTRY DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CHS. 401, 403 AND 405]

### Training and Certification Requirements for Code Administrators; Administration; Elevators and Other Lifting Devices

The Secretary of Labor and Industry (Secretary), under the authority of section 301 of the Pennsylvania Construction Code Act (act) (35 P. S. § 7210.301), amends Chapters 401, 403 and 405 (relating to Uniform Construction Code training and certification of code administrators; administration; and elevators and other lifting devices) to read as set forth in Annex A.

The Department of Labor and Industry (Department), under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), known as the Commonwealth Documents Law (CDL), and 1 Pa. Code § 7.4 (relating to omission of notice of proposed rulemaking), finds that notice of proposed rulemaking under the circumstance is unnecessary and impractical and therefore may be omitted.

The Department's justification for utilizing the final-omitted rulemaking process is that the only changes being made are those either mandated by the act or those that reflect the numerous statutory amendments to the act. Section 304 of the act (35 P. S. § 7210.304) requires the Department, by December 31 of the year of the issuance of a new triennial BOCA National Building Code, or its successor building code, to promulgate regulations adopting the new code as the Uniform Construction Code (UCC). The International Code Council and ANSI updated their National codes and issued 2006 editions early in 2006. The act was amended by the act of June 22, 2001 (P. L. 585, No. 43) (Act 43), the act of February 19, 2004 (P. L. 141, No. 13) (Act 13), the act of July 15, 2004 (P. L. 748, No. 92) (Act 92), the act of December 1, 2004 (P. L. 1773, No. 230) (Act 230), the act of December 22, 2005 (P. L. 478, No. 95) (Act 95) and the act of July 7, 2006 (P. L. 1052, No. 108) (Act 108). Acts 13, 43, 92, 95, 108 and 230 made numerous statutory changes which are reflected in this final-omitted rulemaking. This final-omitted rulemaking also reflects changes made to section 613-A of The Administrative Code of 1929 (71 P. S. § 240.13A) by the act of December 23, 2003 (P. L. 282, No. 47) (Act 47).

#### *Purpose of the Final-Omitted Rulemaking*

The purpose of this final-omitted rulemaking is to update §§ 403.21, 403.26 and 405.2 (relating to Uniform Construction Code; swimming pools; and standards), as required by section 304 of the act, to the new successor building codes issued by the International Code Council

and ANSI, and to incorporate the 2001—2005 statutory amendments to the act in §§ 401.1, 401.2, 401.5, 403.1, 403.25, 403.45, 403.46, 403.62, 403.62a, 403.65, 403.102, 405.7 and 405.11.

*Explanation of Regulatory Requirements*

*§ 401.1. Definitions.*

The following definitions are added: “addition,” “alteration,” “recreational cabin,” “residential building” and “uncertified building.” Acts 92 and Act 95 added these definitions to the act. The Department is adding these definitions to further explain this final-omitted rule-making and for the convenience of the regulation users.

Act 92 also made changes to the definitions of “agricultural building” and “utility and miscellaneous use structures.” Act 92 changed the definition of “agricultural building” to include milk houses and carriage houses owned and used by members of a recognized religious sect for the purposes of housing horses and storing buggies. Act 92 changed the definition of “utility and miscellaneous use structures” to include buildings having an area of less than 1,000 square feet. The Department had not included the previous definition of “utility and miscellaneous use structures” in the UCC regulations. However, the amendments to section 503 of the act (35 P. S. § 7210.503) changed the size of structures when a municipality may pass an ordinance stricter than the UCC. The Department determined that inclusion of this definition would help clarify the ordinance change requirements. This amendment reflects the statutory changes to the mentioned definitions.

The following definitions are amended to reflect the most current editions required by section 304 of the act: “ICC Electrical Code,” “International Building Code,” “International Energy Conservation Code,” “International Existing Building Code,” “International Fire Code,” “International Fuel Gas,” “International Mechanical Code,” “International Performance Code,” “International Plumbing Code,” “International Residential Code,” “International Wildland-Urban Interface Code,” “Pennsylvania’s alternative residential energy provisions” and “Uniform Construction Code.” The publication year in each definition is being changed from 2003 to 2006.

“International Urban-Wildland Interface Code” has been changed to the “International Wildland-Urban Interface Code” to reflect the International Code Council’s change to its publication.

The definition of “NSPI” is deleted and replaced with the definition of “APSP” to reflect the name change of the National organization publishing the pool and spa standards. The name of the organization changed from the National Spa & Pool Institute to the Association of Pool and Spa Professionals.

*§ 401.2. Department fees.*

The fees for elevators and lifting devices are amended in accordance with the fee changes made by Act 47.

*§ 401.5. Waivers.*

Section 401.5(c) is amended to reflect the change in Acts 92 and 108 that added and then amended section 701(b)(2) of the act (35 P. S. § 7201.701(b)(2)) that allows a code administrator to act in place of a lumber grading or inspection agency to satisfy the requirements in section 2303.1.1 of the “International Building Code” and sections R404.2.1, R502.1, R602.1, R802.1 of the “International Residential Code.”

*§ 403.1. Scope.*

Section 403.1 (a)(2) is added to continue the intent of section 104(b)(2) of the act (35 P. S. § 7210.104(b)(2)) and to clarify what UCC requirements apply to buildings already under a design or construction contract. Buildings under a contract for design or construction at the time these UCC amendments take effect need only comply with the UCC requirements in effect when the design contract was executed. The purpose is to save building owners time and expense and not to require redesign or resubmission of plans for buildings in the construction process as was provided for during the initial code adoption process.

Section 403.1(b) is amended to include exemptions added to the UCC by Acts 13, 43, 92, 95 and 230. Section 403.1(b)(3) is amended to reflect changes to the definition of “utility and miscellaneous use structures” in section 103 of the act (35 P. S. § 7210.103) by Act 92. The area of a utility and miscellaneous use structure has been changed from 500 to 1,000 square feet. A municipality may now adopt a more stringent ordinance for these structures under 1,000 square feet. See section 503(c) of the act.

Section 403.1(b)(8) and (9) is amended to reflect the UCC exclusion in Act 92 for alterations and repairs to residential buildings which do not make structural changes or changes to means of egress. See section 104(b)(5) of the act.

Under Act 108, § 403.1(b)(10) is added to exempt the installation of aluminum siding or siding onto an existing residential or an existing commercial building, except as might be required by ordinances in effect before July 1, 1999, or change ordinances promulgated under section 503 of the act which meet or exceed the UCC. See section 303(b)(1) of the act (35 P. S. § 7210.303(b)(1)) and section 503 of the act.

Section 403.1(b)(11) and (c) is amended to reflect the recreational cabin exclusion from the UCC made by Act 92. Recreational cabins are excluded from UCC requirements if the cabins meet the criteria in sections 103 and 104(b)(7) of the act. The continuity of the UCC exclusion continues upon the sale of a recreational cabin if the criteria in section 104(b)(7)(b.1) of the act are met.

Section 403.1(f) is added to reflect the exclusion of one-room school houses utilized by members of recognized religious sects whose religious beliefs conflict with the electrical provisions and the lumber and wood provisions of the UCC. This exclusion requires that the one-room school house be used only by members of the religious sect. This reflects the amendments to section 901(b) of the act (35 P. S. § 7210.901(b)) made by Acts 92 and 108.

Subsection (g) is added to § 403.1 to reflect that coal-fired boilers installed in residential buildings are not required to meet the stamping requirements of M2001.1.1 of the “International Residential Code,” which requires an ASME stamp on boilers. These boilers are still required to be designed, constructed and tested in accordance with Chapter 20, section M2001.1.1. This reflects the amendment to section 901(b) of the act by Act 108.

*§ 403.21. Uniform Construction Code.*

Section 403.21(a)(5)(i) and (ii) is added as an exception to the adoption of the “International Plumbing Code.” Section 501(a.1) of the act (35 P. S. § 7210.501(a.1)), added by Act 92, exempts municipalities in counties of the second class from the plumbing code provisions of the UCC if the county has adopted a plumbing code and



accompanying rules and regulations under the Local Health Administration Law (16 P. S. §§ 12001—12028). Under Act 92, the county retains the authority to promulgate and enforce the existing plumbing code and to make any changes it deems necessary if the changes meet the minimum requirements of the UCC.

Section 403.21(a)(6)(i) and (ii) is added as an exception to the adoption of the "International Residential Code." Section 301(a)(8) of the act, as amended by Act 92, requires the Department to exclude section R313.1.1 of the "International Residential Code for One- and Two-Family Dwellings" requiring interconnected smoke alarms from applying to existing one-family and two-family dwellings undergoing alterations, repairs or additions. The Department, as part of the UCC regulations, must instead require noninterconnected battery-operated smoke alarms to be installed.

Act 13 requires the Department to include in the UCC regulations an exception to the stairway tread and riser provisions of the "International Residential Code." This exception makes permanent the original exception in section 301(a)(6) of the act which was to continue only until December 31, 2003. The exception requires stairway treads and risers to meet section 1014.6, regarding stairway treads and risers, of the 1993 BOCA National Building Code, Twelfth Edition, and section R-213.1, regarding stairways, of the CABO One and Two Family Dwelling Code, 1992 Edition. These stairway provisions are fully set out in § 403.21(a)(6)(ii). Section 403.21(d), which originally addressed the requirement that expired on December 31, 2002, is deleted.

Section 403.21(a)(9), which adopted sections AE501-AE503 and AE601-AE605 of Appendix E of the "International Residential Code," is deleted. Section 6 of the Manufactured Housing Improvement Act (35 P. S. § 1658.6) requires that a manufactured home be installed in accordance with the manufacturer's approved instructions or under the UCC if there are no approved instructions covering an installation activity.

*§ 403.25. Manufactured and industrialized housing.*

Subsection (a)(1) and (2) is amended to reflect the changes to the UCC made by section 6 of the Manufactured Housing Improvement Act. The installation of new manufactured housing must be installed according to the manufacturer's approved design and instructions. Construction activities or processes including utility connections and grading not addressed by the manufacturer's approved design must comply with the UCC.

*§ 403.26. Swimming pools.*

Section 403.26 is amended to reflect the change in the name of the National association publishing pool guidelines from the National Spa & Pool Institute to the Association of Pool and Spa Professionals. It also updates the version of the ANSI/NSPI-1 standard for public pools from the 1991 version to the 2003 version.

*§ 403.28. Uncertified buildings.*

Section 403.28 is added under Act 95, which specifically established requirements for uncertified buildings. Buildings within the Department's jurisdiction are covered by subsections (a) and (b). Section 403.28(a) provides that buildings constructed before April 27, 1927, are deemed to be legally occupied until the owner proposes to renovate, add an addition, alter or change the occupancy of the

building. Any renovation, addition, alteration and change in occupancy in pre-1927 buildings must comply with the UCC. See section 902(b) of the act (35 P. S. § 7210.902(b)).

Section 403.28(b) provides that other uncertified buildings within the Department's jurisdiction must meet certain minimum building code requirements regarding maximum story height, minimum allowable construction type based on floor area, vertical opening and shaft protection, means of egress and maximum travel distance requirements. The building must also meet the fire safety requirements in the "International Building Code" for fire alarms, extinguishers, heat and smoke detectors, sprinkler systems and use separations.

If construction began on a building before May 19, 1984, automatic sprinkler systems are not required. If construction began on a building after May 19, 1984, automatic sprinkler systems are only required if the building is classified in use groups E (educational), H (high-hazard), I (institutional), R-1 or R-2 (residential) or if the building has occupied floors more than 75 feet above the lowest level of fire department access. For buildings in use groups R-1 and R-2 which do not have occupied floors more than 75 feet above lowest level of fire department access, hard-wired interconnected heat and smoke detectors may be installed instead of automatic sprinkler systems. If construction began after May 18, 1984, automatic sprinkler installation is required and the system must be installed by December 22, 2010.

Section 403.28(b) also provides accessibility requirements for uncertified buildings within the Department's jurisdiction. There are no accessibility requirements if construction began before September 1, 1965. If construction began after August 31, 1965, and before February 18, 1989, and if the building is a State-owned, a restaurant or a retail commercial establishment, the building must have at least one accessible main entrance and an accessible route from the accessible entrance to any public spaces on the same level as the accessible entrance. If toilet rooms are provided, the building must have at least one toilet room for each sex or a unisex toilet room complying with the accessibility requirements of the "International Building Code." If construction began after February 17, 1989, all accessibility requirements of the "International Building Code" apply.

Under § 403.28(b), structural requirements will not be imposed unless the Department determines that the building or a portion of the building has defects that would be defined as dangerous in the "International Existing Building Code." If the building is determined to be dangerous, the Department may impose only those requirements minimally necessary to remove danger to the building's occupants.

Section 403.28(c) covers uncertified buildings which are under the jurisdiction of local government. Under this section, a construction code official must issue a certificate of occupancy to an uncertified building if it meets the requirements of the latest version of the "International Existing Building Code" or Chapter 34 of the "International Building Code." A construction code official may deny the issuance of a certificate of occupancy only if the official deems that a building is unsafe because of inadequate means of egress, inadequate lighting and ventilation, fire hazards or other dangers to human life or to public welfare.

*§ 403.45. Inspections.*

The Department corrected the citation to the fire protection certification in § 403.45(e) from “§ 401.7(13)” to “§ 401.7(6).” Subsection (f) was added to reflect the Act 92 amendment to section 701(b)(2) of the act that allows a code administrator to act in place of a lumber grading or inspection agency to satisfy the requirements in section 2303.1.1 of the “International Building Code.”

*§ 403.62. Permit requirements and exemptions.*

Section 403.62(c) is amended to reflect Act 92’s amendment to section 104(b) of the act which excludes from the UCC repairs and alterations to residential buildings which do not make structural changes or changes to means of egress and repairs. Act 92 specifically states that a structural change does not include a minor framing change needed to replace existing windows or doors.

Section 403.62(c) originally enumerated the exemptions from Chapter 1 of the “International Residential Code.” Since the act now exempts residential repairs and alterations that do not make structural changes, the Department simplified this section by deleting references to window and door, and glass replacements in the same opening. The Department also deleted the list of minor electrical work, appliance replacement, gas work, mechanical work, plumbing work and heating, ventilation and air conditioning work that are exempt from the UCC and permitting requirements.

Section 403.62(d) is amended to clarify work that does not constitute ordinary repairs under Act 92. The cutting away of a wall was changed to reference a load-bearing wall, partition or portion of a wall only. Work to a standpipe, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring or mechanical was amended to include only the addition or relocation.

*§ 403.62a. Permit application.*

A grammatical correction was made to subsection (e). The word “structure’s” was changed to “structures.”

*§ 403.65. Certificate of occupancy.*

Section 301(a)(9) of the act, as amended by Act 95, requires the Department to adopt section 110.3, regarding temporary occupancy, of the “International Building Code” as part of this final-omitted rulemaking. Section 403.65(f) is added to allow a building code official to issue a temporary certificate of occupancy for a portion or portions of the building or structure before the completion of the entire work covered by the permit if the portion or portions may be occupied safely. The building code official must set a time period for which the temporary permit will be valid.

*§ 403.102. Municipalities electing to enforce the Uniform Construction Code.*

In addition to changing the definition of “utility and miscellaneous use structure” by increasing the floor space from 500 to 1,000 square feet, Act 92 amended section 503(c) of the act to allow municipalities to enact ordinances which adopt stricter code requirements than required by the UCC for the regulation of these structures. Before Act 92, municipalities could not regulate utility and miscellaneous use structures by ordinance. Section 403.102(i) is amended to reflect that municipalities can now adopt more stringent requirements than the UCC for these structures when the structures are less than 1,000 square feet.

*§ 405.2. Standards.*

Section 405.2(a)(4) is amended to reference the 2006 edition of ANSI B77.1. This change reflects the Act 230 amendment to section 302 of the act (35 P. S. § 7210.302(a)(2)) to reference the latest ANSI standards applicable to the operation of ski lifts.

*§ 405.11. Accident report.*

Section 405.11 is amended to exclude the equipment shut-down requirements due to nonfatal accidents from ski lifts. This section reflects section 3 of Act 230, specifically excluding ski lifts from § 405.11(e).

*Fiscal Impact*

The Department has determined that the final-omitted rulemaking will have no adverse fiscal impact on the Commonwealth.

*Paperwork*

The final-omitted rulemaking will not generate substantial paperwork for the public or the Commonwealth.

*Sunset Date*

The final-omitted rulemaking becomes effective on December 31, 2006. The final-omitted rulemaking is scheduled for review within 3 years of publication. No sunset date has been assigned.

*Contact Person*

The contact person is Edward Leister, Assistant Director, Bureau of Occupational and Industrial Safety, Labor and Industry Building, 16th Floor, Harrisburg, PA 17120, eleister@state.pa.us.

*Regulatory Review*

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), on October 20, 2006, the Department submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Committee on Labor and Industry and the House Committee on Labor Relations. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on November 29, 2006, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 30, 2006, and approved the final-omitted rulemaking.

*Findings*

The Department finds that the final-omitted rulemaking is necessary and appropriate for the administration and enforcement of the authorizing statute. Under section 204 of the CDL, the Department also finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are unnecessary because it is in the public interest to expedite this final-omitted rulemaking.

*Order*

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 34 Pa. Code Chapters 401, 403 and 405, are amended by amending §§ 401.1, 401.2, 401.5, 403.1, 403.21, 403.25, 403.26, 403.45, 403.46, 403.62, 403.62a, 403.65, 403.102, 405.2

and 405.11 and adding § 403.28 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Secretary shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on December 31, 2006.

STEPHEN M. SCHMERIN,  
Secretary

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 7777 (December 16, 2006).)*

**Fiscal Note:** 12-75. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 34. LABOR AND INDUSTRY**

**PART XIV. UNIFORM CONSTRUCTION CODE**

**CHAPTER 401. UNIFORM CONSTRUCTION CODE  
TRAINING AND CERTIFICATION OF CODE  
ADMINISTRATORS**

**§ 401.1. Definitions.**

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*APSP*—The Association of Pool and Spa Professionals, 2111 Eisenhower Avenue, Alexandria, Virginia 22314-4695.

\* \* \* \* \*

*Addition*—An extension or increase in floor area or height of a building or structure.

*Agricultural building*—

(i) A structure utilized to store farm implements, hay, feed, grain or other agricultural or horticultural products or to house poultry, livestock or other farm animals and a milk house.

(ii) The term includes a carriage house owned and used by members of a recognized religious sect for the purposes of housing horses and storing buggies.

(iii) The term does not include habitable space or spaces in which agricultural products are processed, treated or packaged and may not be construed to mean a place of occupancy by the general public.

*Alteration*—Any construction or renovation to an existing structure other than repair or addition.

\* \* \* \* \*

*ICC Electrical Code*—The “ICC Electrical Code-Administrative Provisions 2006” (first printing) issued by the ICC. The term includes all errata issued by the ICC.

\* \* \* \* \*

*International Building Code*—Chapters 2–29 and 31–35 of the “International Building Code 2006” (first printing), issued by the ICC. The term includes all errata issued by the ICC.

*International Energy Conservation Code*—The “International Energy Conservation Code 2006” (first printing) issued by the ICC. The term includes all errata issued by the ICC.

\* \* \* \* \*

*International Existing Building Code*—The “International Existing Building Code for Buildings and Facilities 2006” (first printing) issued by the International Code Council. The term includes all errata issued by the ICC.

*International Fire Code*—The “International Fire Code 2006” (first printing) issued by the ICC. The term includes all errata issued by the ICC.

*International Fuel Gas Code*—The “International Fuel Gas Code 2006” (first printing) issued by the ICC. The term includes all errata issued by the ICC.

*International Mechanical Code*—The “International Mechanical Code 2006” (first printing) issued by the ICC. The term includes all errata issued by the ICC.

*International Performance Code*—The “International Performance Code for Buildings and Facilities 2006” (first printing) issued by the ICC. The term includes all errata issued by the ICC.

*International Plumbing Code*—The “International Plumbing Code 2006” (first printing) issued by the ICC. The term includes all errata issued by the ICC.

*International Residential Code*—The “International Residential Code for One- and Two-Family Dwellings 2006” (first printing) issued by the ICC. The term includes all errata issued by the ICC.

*International Wildland-Urban Interface Code*—The “International Wildland-Urban Interface Code 2006” issued by the ICC. The term includes all errata issued by the ICC.

\* \* \* \* \*

*Manufactured housing*—Under section 901(a) of the act (35 P. S. § 7210.901(a)), housing which bears a label as required by and referenced in the Manufactured Housing Act (35 P. S. §§ 1656.1–1656.9), certifying that it conforms to Federal construction and safety standards adopted under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C.A. §§ 5401–5426).

*Occupancy*—Approved use of a building or a structure under the Uniform Construction Code.

\* \* \* \* \*

*Pennsylvania's Alternative Residential Energy Provisions*—The “Pennsylvania Alternative Residential Energy Provisions” issued in 2006 by the PHRC.

\* \* \* \* \*

*Recreational cabin*—A structure where all of the following apply:

(i) The cabin is utilized principally for recreational activity.

(ii) The cabin is not utilized as a domicile or residence for any individual for any time period.

(iii) The cabin is not utilized for commercial purposes.

(iv) The cabin is not greater than two stories in height, excluding basement.

(v) The cabin is not utilized by the owner or any other person as a place of employment.

(vi) The cabin is not a mailing address for bills and correspondence.

(vii) The cabin is not listed as an individual's place of residence on a tax return, driver's license, car registration or voter registration.

\* \* \* \* \*

*Residential building*—Detached one-family and two-family dwellings and multiple single-family dwellings which are not more than three stories in height with a separate means of egress which includes accessory structures.

\* \* \* \* \*

*Uniform Construction Code*—This chapter; "The International Building Code First Edition 2006" and the "International Residential Code for One- and Two-Family Dwellings 2006," available from the International Code Council, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60478-5795, 1 (800) 786-4452; and any standards adopted by the Department in this chapter under section 301 of the act (35 P. S. § 7210.301).

\* \* \* \* \*

*Uncertified building*—

(i) An existing building which was not approved for use and occupancy by the Department or a municipality which was enforcing a building code before April 9, 2004.

(ii) The term does not include a residential building.

\* \* \* \* \*

*Utility and miscellaneous use structures*—

(i) Buildings or structures of an accessory character and miscellaneous structures not classified by the ICC in any specific use group.

(ii) The term includes carports, detached private garages, greenhouses and sheds having a building area less than 1,000 square feet.

(iii) The term does not include swimming pools or spas.

\* \* \* \* \*

**§ 401.2. Department fees.**

\* \* \* \* \*

(c) The following fees apply to plan review and application for a permit for installation:

(1) Passenger, freight and combination passenger/freight elevators (not hydraulic elevators):

(i) 1—7 floors	\$363
(ii) 8—20 floors	\$436
(iii) More than 20 floors	\$508
(2) Hydraulic passenger, freight, combination passenger/freight elevators and other lifting devices	\$290
(3) Ski lifts	\$508
(4) Escalator and moving walks	\$290
(5) Wheelchair lift and inclined stairway chairlift	\$150
(6) Orchestra lift, belt manlift, stage lift, organ lift and other lifting devices	\$300
(7) Permit for alterations and major repairs	\$145

(8) Reinspection following failed major repair inspection (per inspection)	\$100 paid before reinspection
(9) Reinspection following failed acceptance inspection (to a maximum of \$300 per inspection)	50% of initial permit fee paid before reinspection
(10) Revision of plans	50% of initial permit fee

(d) The following fees apply to periodic elevator and other lifting device inspections under § 405.7 (relating to periodic inspections):

(1) Passenger, freight and combination passenger/freight elevators (not hydraulic):

(i) 1—7 floors	\$94
(ii) 8—20 floors	\$116
(iii) More than 20 floors	\$145
(2) Hydraulic passenger, freight, combination passenger/freight elevators and other lifting devices	\$73

(3) Ski lifts	\$145
(4) Wheelchair lift and inclined stairway chairlift	\$75
(5) Escalator and moving walk	\$94
(6) Orchestra lift, belt manlift, stage lift, organ lift and other lifting devices	\$75

(e) The following fees apply to witnessing periodic tests under § 405.8 (relating to periodic testing):

(1) Electric elevators with one to ten openings	\$125
(2) Electric elevators with 11-20 openings	\$150
(3) Electric elevators with more than 20 openings	\$175
(4) Roped hydraulic elevator and roped/chained vertical reciprocal conveyor	\$110
(5) Hydraulic elevator, limited use/limited application elevator and direct hydraulic vertical reciprocating conveyor	\$85
(6) Escalator and moving walks	\$85
(7) Wheelchair lift and inclined stairway chairlift	\$75
(8) Orchestra lift, stage lift and organ lift	\$125
(9) Other equipment	\$ 85

(f) The following fees apply to the witnessing of periodic dynamic testing required under § 405.9 (relating to periodic dynamic testing):

(1) Aerial tramways	\$300
(2) Detachable aerial grips	\$300
(3) Fixed grip aerial lifts	\$200

(g) The following fees apply to a certificate of operation:

(1) Annual renewal	\$36
(2) Duplicate	\$25

\* \* \* \* \*

**§ 401.5. Waivers.**

(a) The Department may grant a request for waiver of the testing requirements of § 401.6 (relating to certification categories and testing) if the applicant meets any of the following criteria:

(1) Passed a test substantially similar to the testing categories in § 401.6 within the 6 years prior to July 12, 2002.

(2) Passed a test substantially similar to the testing categories in § 401.6 before July 12, 1996, so long as the applicant submits any of the following to the Department:

(i) Evidence of continued employment as a code administrator in the related field.

(ii) Current certification issued by a model code organization.

(iii) Evidence of completion of 30 hours of continuing education or a college degree program in associated fields.

(3) Passed a certified building official examination. An applicant who passed the examination may be eligible to receive certification in the following categories:

(i) Residential building inspector.

(ii) Building inspector.

(iii) Building plans examiner.

(b) An applicant for waiver shall complete a Department-provided application form and pay the required initial certification fee under § 401.2 (relating to Department fees). If the Department approves the waiver, the applicant shall comply with § 401.4 (relating to application and identification).

(c) A code administrator may act in place of a lumber grading or inspection agency to satisfy the requirement under section 2303.1.1 of the International Building Code or its successor code or sections R404.2.1, R502.1, R602.1, R802.1 of the "International Residential Code" or its successor code under section 701(b)(2) of the act (35 P. S. § 7210.701(b)(2)).

**CHAPTER 403. ADMINISTRATION****GENERALLY****§ 403.1. Scope.**

(a) *Application.*

(1) The Uniform Construction Code applies to the construction, alteration, repair, movement, equipment, removal, demolition, location, maintenance, occupancy or change of occupancy of every building or structure which occurs on or after April 9, 2004, and all existing structures that are not legally occupied.

(2) The Department will promulgate regulations adopting the new triennial BOCA National Building Code, or its successor building code as the Uniform Construction Code by December 31 of the year of the issuance under section 304(a)(1) of the act (35 P. S. § 7210.304(a)(1)). New buildings or renovations to existing buildings for which a design or construction contract was executed before the effective date of the regulatory amendment adopting the latest triennial versions of the construction codes and standards shall comply with the codes and standards in effect at the time that the design or construction contract was executed.

(b) *Exclusions and exemptions.* The Uniform Construction Code does not apply to:

(1) New buildings or renovations to existing buildings for which an application for a permit was made to the Department or a municipality before April 9, 2004.

(2) New buildings or renovations to existing buildings on which a contract for design or construction was signed before April 9, 2004.

(3) The following structures if the structure has a building area less than 1,000 square feet and is accessory to a detached one-family dwelling except as might be required by an ordinance adopted under section 503 of the act (35 P. S. § 7210.503):

(i) Carports.

(ii) Detached private garages.

(iii) Greenhouses.

(iv) Sheds.

(4) An agricultural building.

(5) Manufactured or industrialized housing shipped from the factory under section 901(a) of the act (35 P. S. § 7210.901(a)) as provided in § 403.25 (relating to manufactured and industrialized housing).

(6) Installation of tubing, piping, propane gas burning appliances, equipment or fixtures related to liquefied petroleum gas under the Propane and Liquefied Petroleum Gas Act (35 P. S. §§ 1329.1—1329.19).

(7) Construction of individual sewage disposal systems under 25 Pa. Code Chapter 73 (relating to onlot sewage treatment facilities).

(8) Alterations to residential buildings which do not make structural changes or changes to means of egress, except as required by ordinances in effect under sections 303(b)(1) or 503 of the act (35 P. S. §§ 7210.303(b)(1) and 7210.503). Under this subsection, a structural change does not include a minor framing change needed to replace existing windows or doors.

(9) Repairs to residential buildings, except as required by ordinances in effect under sections 303(b)(1) and 503 of the act.

(10) Installation of aluminum or vinyl siding onto an existing residential or an existing commercial building, except as might be required by ordinances in effect under section 301(b)(1) (35 P. S. §§ 7210.303(b)(1)) or section 503 of the act.

(11) A recreational cabin if all of the following conditions are met:

(i) The cabin is equipped with at least one smoke detector, one fire extinguisher and one carbon monoxide detector in both the kitchen and sleeping quarters.

(ii) The owner of the cabin files one of the following with the municipality:

(A) A Department form UCC-13 attesting to the fact that the cabin meets the definition of a "recreational cabin" in § 401.1 (relating to definitions).

(B) A valid proof of insurance for the recreational cabin, written and issued by an insurer authorized to do business in this Commonwealth, stating that the structure meets the definition of a "recreational cabin."

(c) *Continuity of recreational cabin exclusion.*

(1) Upon the transfer of ownership of a recreational cabin subject to the recreational cabin exclusion, written notice of the following shall be provided in the sales agreement and the deed:

- (i) The recreational cabin is exempt from the act.
  - (ii) The recreational cabin may not be in conformance with the Uniform Construction Code.
  - (iii) The recreational cabin is not subject to municipal regulation.
- (2) Failure to comply with the notice requirement under paragraph (1) renders the sale void at the purchaser's option.

(d) *Prior permits and construction.*

(1) A permit issued under construction regulations before April 9, 2004, remains valid and the construction of the building or structure may be completed in accordance with the approved permit. The permit is invalid unless the construction commenced within 2 years of permit issuance or a time period specified by municipal ordinance, whichever is less. The permit holder shall acquire a new permit under section 104(c) of the act (35 P. S. § 7210.104(c)) if the permit was not actively prosecuted during this time period.

(2) Construction may be completed without a permit under section 104(c)(2) of the act when construction of a building or structure commenced before April 9, 2004, and a permit was not required at that time.

(3) The legal occupancy of a structure existing on April 9, 2004, may continue without change except where the Uniform Construction Code provides otherwise.

(e) The Uniform Construction Code applies to the construction of a residential building or structure governed by a homeowner's or community association under section 104(d)(2)(ii) of the act.

(f) The electrical provision, and lumber and wood provisions, not relating to pressure treatment, of the Uniform Construction Code do not apply to a dwelling unit or one-room school house utilized by a member or members of a recognized religious sect if a code administrator grants an exemption under section 901(b) of the act (35 P. S. § 7210.901(b)) as follows:

(1) The permit applicant shall file an application with the code administrator stating the manner in which an electrical provision, and the lumber and wood provision unrelated to pressure treatment of the Uniform Construction Code conflicts with the applicant's religious beliefs. The application must also contain an affidavit by the applicant stating:

- (i) The permit applicant is a member of a religious sect.
- (ii) The religious sect has established tenets or teachings which conflict with an electrical provision and lumber and wood provisions unrelated to pressure treatment of the Uniform Construction Code.
- (iii) The permit applicant adheres to the established tenets or teachings of the sect.

(A) For a dwelling unit, the dwelling will be used solely as a residence for the permit applicant and the applicant's household.

(B) For a one-room school house, the school house will be used solely by members of the religious sect.

(2) The code administrator shall grant the application for the exemption if made in accordance with paragraph (1).

(3) If the permit applicant receives an exemption for a building under section 901(b) of the act and the applicant subsequently sells or leases the building, the applicant

shall bring the building into compliance with the provision of the Uniform Construction Code from which it was exempted prior to the sale or lease of the building unless the prospective subsequent owner or lessee files an affidavit in compliance with paragraph (1).

(g) Coal-fired boilers installed in residential buildings must be designed, constructed and tested in accordance with the requirements of Chapter 20, section M2001.1.1 of the "International Residential Code," except for the ASME stamping requirement.

**STANDARDS**

**§ 403.21. Uniform Construction Code.**

(a) The Department adopts and incorporates by reference the following codes as the Uniform Construction Code:

(1) The provisions of Chapters 2—29 and 31—35 of the "International Building Code."

(2) The "ICC Electrical Code."

(3) The "International Mechanical Code."

(4) The "International Fuel Gas Code."

(5) The "International Plumbing Code."

(i) Except that a municipality within a county of the second class may not administer and enforce the "International Plumbing Code" adopted under this chapter.

(ii) A municipality within a county of the second class that has adopted a plumbing code and accompanying rules and regulations under the Local Health Administration Law (16 P. S. §§ 12001—12028), shall retain the authority to promulgate and enforce this plumbing code and to make any changes it deems necessary if the changes meet the Uniform Construction Code's minimum requirements.

(6) The "International Residential Code," except that:

(i) The provisions of R313.1.1 requiring interconnected smoke alarms do not apply to one-family and two-family dwellings undergoing alterations, repairs or additions. Noninterconnected battery operated smoke alarms shall be installed in these dwellings.

(ii) The following specifications apply to residential stairway treads and risers.

(A) The maximum riser height is 8 1/4 inches. There may be no more than a 3/8 inch variation in riser height within a flight of stairs. The riser height is to be measured vertically between leading edges of the adjacent treads.

(B) The minimum tread depth is 9 inches measured from tread nosing to tread nosing.

(C) The greatest tread depth within any flight of stairs may not exceed the smallest by more than 3/8 inch.

(D) Treads may have a uniform projection of not more than 1 1/2 inches when solid risers are used.

(E) Stairways may not be less than 3 feet in clear width and clear headroom of 6 feet 8 inches shall be maintained for the entire run of the stair.

(F) Handrails may project from each side of a stairway a distance of 3 1/2 inches into the required width of the stair.

(7) The "International Fire Code." Section 804.1.1 of the International Fire Code (relating to natural cut trees) is not adopted under this chapter. A municipality that elects to adopt an ordinance for the administration and

enforcement of the Uniform Construction Code may, by ordinance, restrict the placement of natural cut trees in an occupancy group. The ordinance restricting the placement of natural cut trees is not subject to section 503(b)—(k) of the act (35 P. S. § 7210.503(b)—(k)) and § 403.102(i)—(k) (relating to municipalities electing to enforce the Uniform Construction Code).

(8) The "International Energy Conservation Code."

(9) The "International Existing Building Code."

(10) The "International Wildland-Urban Interface Code."

(11) Appendix E of the "International Building Code."

(12) Appendix H of the "International Building Code."

(13) Appendix G of the "International Residential Code."

\* \* \* \* \*

(d) A permit applicant may utilize one of the following prescriptive methods to demonstrate compliance with the energy conservation requirements of the Uniform Construction Code. The standards are those listed for the climatic zone of this Commonwealth where the building or structure is located:

(1) The prescriptive methods for detached residential buildings contained in the current version of the "International Energy Conservation Code" compliance guide containing State maps, prescriptive energy packages and related software published by the United States Department of Energy, Building Standards and Guidelines Program (REScheck<sub>TM</sub>) or "Pennsylvania's Alternative Residential Energy Provisions."

(2) The prescriptive methods for all other buildings or structures contained in the current version of the "International Energy Conservation Code" compliance guide containing State maps, prescriptive packages and related software published by the United States Department of Energy, Building Standards and Guidelines Program (COMcheck<sub>TM</sub>).

(e) Construction of individual sewage disposal systems is governed under 25 Pa. Code Chapter 73 (relating to onlot sewage treatment facilities).

(f) The repair, alteration, change of occupancy, addition and relocation of existing buildings must comply with Chapter 34 of the "International Building Code" or with the "International Existing Building Code."

#### § 403.25. Manufactured and industrialized housing.

(a) Manufactured housing is governed by the following under section 901(a) of the act (35 P. S. § 7210.901(a)):

(1) Except as provided in paragraph (2), the Uniform Construction Code does not apply to new manufactured housing assembled by and shipped from the manufacturer and which bears a label which certifies that it conforms to Federal construction and safety standards adopted under the Housing and Community Development Act of 1974 (42 U.S.C.A. §§ 5401—5426) and installation of new manufactured housing in conformity with the manufacturer's approved design applicable to the particular home.

(2) Construction activities or processes including utility connections and grading not addressed by the manufacturer's approved design must comply with the Uniform Construction Code.

(3) The Uniform Construction Code applies to the following:

(i) Alteration or repair to the unit that does not fall within 24 CFR 3280.1—3280.904 (relating to manufactured home construction and safety standards) and the manufacturer's installation instructions after assembly and shipment by the manufacturer.

(ii) Additions to the unit after delivery to the site.

(iii) Construction, alteration, repair or change of occupancy if the manufactured housing is resold to a subsequent purchaser.

(iv) Construction, alteration, repair or change of occupancy if the original purchaser relocates the manufactured housing.

\* \* \* \* \*

#### § 403.26. Swimming pools.

(a) A swimming pool, hot tub and spa which is accessory to a one- or two-family dwelling shall comply with all of the following:

(1) Chapter 41 of the "International Residential Code."

(2) Appendix G of the "International Residential Code."

(3) Section 2406.2, paragraph 9 of the International Building Code (glazing in walls and fences enclosing indoor and outdoor swimming pools, hot tubs and spas).

(4) Section 3109.4 of the "International Building Code" (residential swimming pool enclosures).

(b) A swimming pool that is not accessory to a one- or two-family dwelling must comply with this chapter, the "American National Standards for Public Pools" issued by ANSI and APSP (ANSI/NSPI-1 2003) and the Public Bathing Law (35 P. S. §§ 672—680d).

(c) A hot tub or spa that is not accessory to a one- or two-family dwelling must comply with this chapter and the "American National Standard for Public Spas" issued by ANSI and APSP (ANSI/NSPI-2 1999).

#### § 403.28. Uncertified buildings.

(a) Under section 902(b)(6) of the act (35 P. S. § 7210.902(b)(6)), an uncertified building that was built before April 27, 1927, is deemed to be legally occupied until the owner proposes to renovate, add an addition, alter or change the occupancy of the building. The renovation, addition, alteration or change in occupancy must comply with the Uniform Construction Code.

(b) Under section 902(b) of the act, uncertified buildings within the Department's jurisdiction must meet the following requirements which do not apply to uncertified buildings under subsection (a):

(1) Maximum story height, minimum allowable construction type based on floor area, vertical opening and shaft protection requirements, means of egress requirements pertaining to minimum number of exits, maximum travel distances to exits, means of egress illumination, minimum egress widths and heights for exit doors, exit stairs, exit ramps and exit corridors requirements under the "International Building Code."

(2) Fire safety requirements in the "International Building Code" for fire alarms, fire extinguishers, heat and smoke detectors, automatic sprinkler systems and occupancy and incidental use separations. The following also apply:

(i) If construction began on a building before May 19, 1984, the installation of automatic sprinkler systems is not required.

(ii) If construction began on a building after May 19, 1984, automatic sprinklers are only required if the building is classified in use groups E (educational), H (high-hazard), I (institutional), or R-1 or R-2 (residential) or if the building has occupied floors more than 75 feet above lowest level of fire department access. Buildings in use groups R-1 and R-2 which do not have occupied floors more than 75 feet above lowest level of fire department access may, instead of installing automatic sprinkler systems, install hard-wired interconnected heat and smoke detectors in all rooms or spaces, whether they are occupied or unoccupied.

(iii) If construction of a building began after May 18, 1984, automatic sprinkler installation shall be completed by December 22, 2010, or any certificate of occupancy issued shall be invalid.

(3) Accessibility requirements are applicable as follows:

(i) If construction of an uncertified building began before September 1, 1965, accessibility requirements will not be imposed by the Department.

(ii) If construction of a building began after August 31, 1965, and before February 18, 1989, and if the building is a State-owned building, a restaurant or a retail commercial establishment, the building must have at least one accessible main entrance, an accessible route from the accessible entrance to any public spaces on the same level as the accessible entrance and, if toilet rooms are provided, the building must have at least one toilet room for each sex or a unisex toilet room complying with the accessibility requirements of the "International Building Code."

(iii) If construction of the building began after February 17, 1989, the accessibility requirements of the "International Building Code" shall be met.

(4) Structural requirements will not be imposed unless the Department determines that the building or a portion of the building has defects that are defined as dangerous in section 202 of the "International Existing Building Code." If the building is dangerous, the Department may impose only those requirements minimally necessary to remove danger to the building's occupants.

(c) The following apply to uncertified buildings where the Department does not have jurisdiction and which are not governed under subsection (a):

(1) A construction code official shall issue a certificate of occupancy to an uncertified building if it meets the requirements of the latest version of the "International Existing Building Code" or Chapter 34 of the "International Building Code." The construction code official shall utilize the code for the municipality which best applies, in the official's professional judgment.

(2) A construction code official may deny the issuance of a certificate of occupancy if the official deems that a building is unsafe because of inadequate means of egress, inadequate lighting and ventilation, fire hazards or other dangers to human life or to public welfare.

(3) A municipality governed under this subsection may utilize the standards of subsection (b) for the issuance of certificates of occupancy to uncertified buildings if the municipality adopts an ordinance.

**PERMIT AND INSPECTION PROCESS FOR COMMERCIAL CONSTRUCTION**

**§ 403.45. Inspections.**

\* \* \* \* \*

(e) A construction code official shall conduct a final inspection of the completed construction work and file a final inspection report, which indicates that all of the following areas met Uniform Construction Code requirements after a final inspection of the completed construction work:

- (1) General building under § 401.7(6) (relating to certification category specification for building inspector).
- (2) Electrical under § 401.7(7).
- (3) Plumbing under § 401.7(9).
- (4) Accessibility under § 401.7(11).
- (5) Fire protection under § 401.7(6).
- (6) Mechanical under § 401.7(8).
- (7) Energy conservation under § 401.7(10).

(f) A code administrator may act in place of a lumber grading or inspection agency to satisfy the requirements under section 2303.1.1 of the "International Building Code" or its successor code.

**§ 403.46. Certificate of occupancy.**

\* \* \* \* \*

(e) A building code official may issue a temporary certificate of occupancy for a portion or portions of the building or structure before the completion of the entire work covered by the permit if the portion or portions may be occupied safely. The building code official shall set a time period during which the temporary certificate of occupancy is valid.

**PERMIT AND INSPECTION PROCESS FOR RESIDENTIAL BUILDINGS**

**§ 403.62. Permit requirements and exemptions.**

\* \* \* \* \*

(c) A permit is not required for the exceptions listed in § 403.1(b) (relating to scope) and the following, if the work does not violate a law or ordinance:

- (1) Fences that are no more than 6 feet high.
- (2) Retaining walls that are not over 4 feet in height measured from the lowest level of grade to the top of the wall unless the wall supports a surcharge.
- (3) Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons and the ratio of height to diameter or width does not exceed 2 to 1.
- (4) Sidewalks and driveways that are 30 inches or less above adjacent grade and not placed over a basement or story below it.
- (5) Prefabricated swimming pools that are less than 24 inches deep.
- (6) Swings and other playground equipment accessory to a one- or two-family dwelling.
- (7) Window awnings supported by an exterior wall which do not project more than 54 inches from the exterior wall and do not require additional support.
- (8) Installation of an uncovered deck where the floor of the deck is no more than 30 inches above grade.
- (9) Installation or rearrangement of communications wiring.

(d) An ordinary repair does not require a permit. The following are not ordinary repairs:

- (1) Cutting away a load-bearing wall, partition or portion of a wall.



(2) The removal or cutting of any structural beam or load-bearing support.

(3) The removal or change of any required means of egress, or rearrangement of parts of a structure affecting the egress requirements.

(4) The addition to, or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring or mechanical.

(e) A permit is not required for the installation, alteration or repair of generation, transmission, distribution, metering or other related equipment that is, by established right, under the ownership and control of a public utility as the term "public utility" is defined in 66 Pa.C.S. § 102 (relating to the definitions).

**§ 403.62a. Permit application.**

\* \* \* \* \*

(e) The application must contain a site plan showing the size and location of the new construction and existing structures on the site and the structures' distance from lot lines. If the construction involves demolition, the site plan must indicate construction that is to be demolished and the size and location of existing structures and construction that will remain on the site or plot. A building code official may waive or modify the site plan requirement when the permit application is for an alteration or a repair or if the waiver is warranted for other reasons.

**§ 403.65. Certificate of occupancy.**

\* \* \* \* \*

(f) A building code official may issue a temporary certificate of occupancy for a portion or portions of the building or structure before the completion of the entire work covered by the permit if the portion or portions may be occupied safely. The building code official shall set a time period during which the temporary certificate of occupancy is valid.

**MUNICIPAL ELECTION**

**§ 403.102. Municipalities electing to enforce the Uniform Construction Code.**

\* \* \* \* \*

(i) A municipality may enact an ordinance containing standards that equal or exceed the Uniform Construction Code as adopted by § 403.21 (relating to the Uniform Construction Code) under section 503 of the act (35 P. S. § 7210.503) after Department review and approval. A municipality may enact ordinances under this section which adopt additional code requirements for alterations or repairs to residential buildings. A municipality may enact ordinances under this section which adopt stricter code requirements than required by the act for the regulation of utility and miscellaneous use structures. The municipality shall notify the Department of the proposed ordinance and submit the following to the Department for its review:

- (1) The complete ordinance.
- (2) The information required in subsection (c).
- (3) A detailed statement containing the differences between the proposed ordinance and the Uniform Construction Code and how the ordinance will equal or exceed the Uniform Construction Code.

\* \* \* \* \*

**CHAPTER 405. ELEVATORS AND OTHER LIFTING DEVICES**

**GENERALLY**

**§ 405.2. Standards.**

(a) The following standards are adopted as part of the Uniform Construction Code and apply to the listed type of elevator or other lifting device. Other authorities referenced in the standards are adopted if the authority is not excluded in subsection (b):

\* \* \* \* \*

(4) "ANSI B77.1-2006" for passenger ropeways, aerial tramways, aerial lifts, surface lifts, tows and conveyors.

\* \* \* \* \*

**§ 405.11. Accident report.**

\* \* \* \* \*

(e) An elevator or lifting device involved in a nonfatal accident resulting from mechanical or electrical failure may not return to operation until the Department provides approval. This requirement does not apply to ski lifts.

[Pa.B. Doc. No. 06-2448. Filed for public inspection December 15, 2006, 9:00 a.m.]

**Title 52—PUBLIC UTILITIES**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**[52 PA. CODE CHS. 63, 64, 71 AND 73]**

[L-00050176]

**PUC Filing and Reporting Requirements on Local Exchange Carriers**

The Pennsylvania Public Utility Commission, on August 17, 2006, adopted a final rulemaking order which eliminates certain filing and reporting requirements for local exchange carriers (LEC).

*Executive Summary*

By Order entered on August 21, 2006, at Docket No. L-00050176, the Commission adopted a Final Rulemaking Order to amend §§ 63.11, 64.22, 64.23(a) and (b), 64.41, 64.201(a) and (b), 71.3(b), 73.3(a) and (b), 73.5(b), and 73.7(b). The purpose of the final-form rulemaking is to eliminate or modify the current language of the previously-mentioned regulations to reflect the Commission's action in its Proposed Rulemaking Order at Docket No. L-00050176 entered August 21, 2006, and its Final Implementation Order at *PUC Filing and Reporting Requirements on Local Exchange Carriers* at Docket No. M-00041857 entered October 5, 2005. At Docket No. M-00041857, the Commission determined that certain LECs reporting requirements should be maintained, streamlined or eliminated in accordance with the provisions of Chapter 30 and the submitted comments in the docket. In addition, the rescission of § 63.11 is in accordance with the Commission's action in its Final Order at *Section 3015(f) Review Regarding the Lifeline Tracking Report, Accident Report and Service Outage Report* at Docket No. M-00051900 entered December 30, 2005.

Under the current language of § 63.11, a public utility providing telecommunications service is required to file an accident report involving its facilities or operations resulting in injury or death to a person or public utility

employee. The amendment to § 63.11 eliminates this regulation since this report can no longer be required in accordance with section 3015(e) and (f)(1) of the Public Utility Code.

Also, § 64.23 provides that LECs report instances of unauthorized charges and changes to customers' bills known as cramming and slamming. Section 64.41 also requires LECs to pay interest on customers' deposits and, subsequently, report the paid interest rate to the Commission. In addition, § 64.201(a) and (b) requires LECs to file residential account information reflecting billing and collection practices including customer disputes on a quarterly or annual basis depending upon the size of the LEC. In Chapter 64, the Commission is changing the regulations to require LECs to maintain instances of slamming and cramming but to eliminate the quarterly requirement to report the unauthorized activity to the Commission. Also, the Commission is modifying the interest rate to be paid on customers' deposits to reflect current practice by the telecommunications industry. In addition, the Commission is reducing the filing of residential account information to an annual reporting requirement for all LECs regardless of the number of residential accounts that the companies serve.

In Chapter 71, LECs with annual intraState gross revenues in excess of \$10 million currently are required to file financial reports on an annual basis. The Commission is rescinding § 71.3(b) because Chapter 30 of Title 66 does not permit the filing of a separate financial earnings report of the type required by this regulation.

In Chapter 73, LECs are required to submit an annual depreciation report (§ 73.3) and a triennial service life study report (§ 73.5) and capital investment plan report (§ 73.7). The Commission is eliminating all of these filings because Chapter 30 of Title 66 does not permit the filing of a separate financial earnings report of the type required by this regulation.

On an administrative note, the Commission is correcting a ministerial oversight that occurred in 1998 in a prior Final Rulemaking Order regarding Chapter 64 Standards and Billing Practices for Residential Telephone Service at L-00960113. That order referenced the deletion of § 64.22(1); however, neither the ordering paragraphs nor Annex A included the deletion.

The order was published at 28 Pa.B. 3379 (July 18, 1998) and revised § 64.2. The order retained the elimination of interexchange carrier billing data as disputable subject matter under Chapter 64 provisions and stated that the final regulations will delete § 64.22(1) since the local exchange carriers will no longer be responsible for settling interexchange carrier related complaints. Although the definition of "dispute" was revised in the order, neither the ordering paragraphs nor the Annex A regulations attached to the order included the deletion. Therefore, to correct the oversight and to ensure the language is consistent between §§ 64.2 and 64.22, the Commission directed that § 64.22(1) be deleted to correct the administrative oversight in the prior rulemaking. Since the passage of the 1998 final rulemaking, the Commission noted this oversight and has taken steps to revise internal procedures accordingly, but has awaited this rulemaking opportunity to formally correct the text of the regulation.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 11, 2006, the Commission submitted a copy of the notice of proposed rulemaking,

published at 36 Pa.B. 1897 (April 22, 2006), to IRRC and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on November 1, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 2, 2006, and approved the final-form rulemaking.

Public Meeting held  
August 17, 2006

*Commissioners Present:* Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane; Kim Pizzigrilli; Terrance J. Fitzpatrick, dissenting statements follow

*Rulemaking re: PUC Filing and Reporting Requirements on Local Exchange Carriers; L-00050176*

**Final Rulemaking Order**

*By the Commission:*

On January 3, 2006, the Commission entered a Proposed Rulemaking Order to promulgate regulations to eliminate certain local exchange carrier (LEC) filing and reporting requirements in compliance with the new Chapter 30<sup>1</sup> and to amend existing regulations so as to require the filing of residential account information on an annual basis rather than on a quarterly basis as currently prescribed by 52 Pa. Code § 64.201(b). Annex A of the Order contained the proposed revised regulations.

The January 3, 2006 Order was published April 22, 2006 at 36 Pa.B. 1897. The Order established a 30-day comment period that closed on May 22, 2006.

On May 22, 2006, the Commission received written comments from the Pennsylvania Telephone Association (PTA). This Final Rulemaking Order discusses the comments and sets forth, in Annex A, the final regulations.

*Discussion*

As a preliminary matter, we note that it is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. P.U.C.*, 625 A. 2d 741 (Pa. Cmwlth. 1993); *U. of Pa. v. Pa. P.U.C.*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Accordingly, any issue raised by PTA that we do not specifically address has been duly considered and rejected and will not be further discussed. Further, ministerial edits that do not have a substantive effect have been included in the final form regulations without specific discussion.

Chapter 30 sets forth reporting requirements for LECs. Although various sections of Chapter 30 provide the Commission with the authority to require information from LECs, as stated previously, section 3015(e) provides that the Commission's filing and audit requirements for LECs operating under an amended network modernization plan are limited to nine enumerated reports.

<sup>1</sup> 66 Pa.C.S. §§ 3011–3019.

On April 15, 2005, in accordance with the newly-enacted Chapter 30, the Commission entered a Tentative Implementation Order<sup>2</sup> directing the continuation, consolidation, and/or elimination of the general filing and reporting requirements presently imposed on LECs operating in Pennsylvania. In its Tentative Order, the Commission sought comments on its initial determinations to maintain, streamline or eliminate certain LEC reports. Upon review of Chapter 30 and the submitted comments, the Commission entered a Final Implementation Order<sup>3</sup> on October 5, 2005, determining which LEC reporting requirements should be maintained, streamlined or eliminated. The order directed the Law Bureau to initiate a rulemaking proceeding to eliminate the following reports: Financial Earnings Report, Annual Depreciation Report, Interest on Deposits Report, Service Life Study Report, Capital Investment Plan Report, Residential Account Information on a quarterly basis, Quarterly Cramming Report, Quarterly Slamming Report, and Collocation Report. Also, in the Final Implementation Order, the Commission found that the Lifeline Tracking, the Accident, and the Service Outage Reports are not within the scope of reports listed in section 3015(e). Therefore, the Commission directed that a new proceeding (M-00051900) be opened to address the issue of whether these reports can meet the exception standard set forth in section 3015(f)(1).<sup>4</sup>

By Final Order entered on December 30, 2005, in the section 3015(f)(1) proceeding, the Commission determined that Accident Reports are no longer required because there is no adequate nexus relating to whether rates are just and reasonable as prescribed by Chapter 30 and Title 66. Accordingly, the Commission found that telecommunications companies do not have to file Accident Reports as required by § 63.11. The Commission found, however, that the Lifeline Tracking Reports and Service Outage Reports met the standards prescribed in section 3015(f) and therefore required the continuation of filing these reports. The Commission directed the Lifeline Tracking report be reviewed and a more streamlined version be developed as well as the establishment of a process to file these reports electronically.<sup>5</sup>

On January 3, 2006, the Commission issued a proposed rulemaking to promulgate regulations to eliminate certain LEC filing and reporting requirements. The January 3, 2006, Order was published on April 22, 2006 in the *Pennsylvania Bulletin*, 36 Pa.B. 1897 and established a 30-day comment period. On May 22, 2006, the PTA filed written comments. After reviewing the filed comments in the proposed rulemaking, the Commission proposes eliminating the following reports: Financial Earnings Report (52 Pa. Code § 71.3); Annual Depreciation Report (52 Pa. Code § 73.3); Accident Report (52 Pa. Code § 63.11); Service Life Study Report (52 Pa. Code § 73.5); Capital Investment Plan Report (52 Pa. Code § 73.7); Quarterly Cramming Report (52 Pa. Code § 64.23); Quarterly Slamming Report (52 Pa. Code § 64.23) and the Collocation Report.<sup>6</sup> In addition, the Commission proposes to modify

<sup>2</sup> *PUC Filing and Reporting Requirements on Local Exchange Carriers*, M-00041857 (Order entered April 15, 2005).

<sup>3</sup> *PUC Filing and Reporting Requirements on Local Exchange Carriers*, M-00041857 (Order entered October 5, 2005).

<sup>4</sup> *Section 3015(f) Review regarding the Lifeline Tracking Report, Accident Report and Service Outage Report*, M-00051900 (Order entered October 5, 2005).

<sup>5</sup> *Section 3015(f) Review regarding the Lifeline Tracking Report, Accident Report and Service Outage Report*, M-00051900 (Order entered December 30, 2005).

<sup>6</sup> Presently, the collocation report requires ILECs or CLECs that collocate switches in Verizon Pennsylvania Inc.'s central offices to report such activity in accordance with the Commission's September 4, 2001 Order. *Bell-Atlantic Supplement to Pa. P.U.C. No. 216 and Pa. P.U.C. No. 218 to become effective July 27, 1999 regarding the FCC's New Requirements on Incumbent Local Exchange Carriers for the Provision of Collocation Service used for Exchange Access and Mandated Compliance via State Tariffs, SGATS and/or Individual Interconnection Agreements*, R-00994697 (Order entered September

the Interest Rate on Deposits Report (52 Pa. Code § 64.41 and Order entered November 5, 1998 at P-00981357) so interest is calculated pursuant to the Loan Interest and Protection Law, 41 P. S. § 101, et seq. and to amend its regulations to require the filing of residential account information on an annual basis rather than on a quarterly basis as currently prescribed by 52 Pa. Code § 64.201(b).

On May 22, 2006, PTA filed Comments stating that the proposed rulemaking does not address in a comprehensive way the entire issue of limiting LEC filing and reporting due to the bifurcation of the reporting issue into: (1) the Interim and Final Orders at this docket (L-00050176) and (2) the continuation, at other dockets, of the Lifeline Tracking Report, Accident Report and Service Outage Report at M-00051900<sup>7</sup> and the Standard Service Surveillance Level Report at P-00021985.<sup>8</sup> PTA contends that these reports should be omitted because the reports are not specifically listed as any of the required reports in section 3015(e) of Act 183, that none of these reports are necessary to ensure the LEC is charging rates that are compliant with the statute and its Chapter 30 Plan, and that the benefits of the reports do not outweigh the expense of producing them. In addition, PTA does not agree that service quality issues have rate implications.

As noted earlier, the Commission addressed the Lifeline Tracking, Accident and Service Outage Reports in separate orders at M-00051900. After issuing a Tentative Order and soliciting comments, the Commission issued a Final Order on December 30, 2005, in which we found that the Lifeline Tracking and Service Outage Reports met the prescribed standards in section 3015(f)(1) and should continue. The Commission found, among other things, that the Lifeline Tracking report was necessary to ensure that the LECs providing Lifeline service are charging rates in compliance with Chapter 30 and that the benefits of the Lifeline Tracking report substantially outweigh the attendant expense and administrative time and effort of the LEC to prepare the report.

Regarding the Service Outage Report, the Commission also found that the report satisfied the exceptions in section 3015(f)(1)(i) and (ii). Specifically, the Commission found that the Service Outage Report was necessary to ensure that the LECs are charging just and reasonable rates in compliance with Chapter 30. The Commission noted that it is long standing precedent in Pennsylvania that quality of service is directly related to just and reasonable rates. Since Service Outage Reports bear on service quality, they are crucial to ensuring that the rates the LECs are charging are just and reasonable. In addition, the Commission found that the benefits of Service Outage Reports outweigh the expense and time and effort to prepare the report by the LEC.

After reviewing the comments, however, the Commission found that Accident reports did not meet the exceptions in section 3015(f)(1). The reports did not have direct nexus to the rates charged by LECs in accordance with Chapter 30 and the alternative forms of regulation suffi-

4, 2001). On February 14, 2005, the Commission eliminated this reporting requirement through a Secretarial Letter to all ILECs and CLECs. In the Final Implementation Order, we affirmed our determination concerning collocation reports and concluded that no further action is necessary. Since there is no current regulation concerning this reporting requirement, the elimination of this reporting requirement is in accordance with section 703(g) of Title 66 as discussed in our Tentative and Final Implementation Orders at M-00041857.

<sup>7</sup> *Section 3015(f) Review regarding the Lifeline Tracking Report, Accident Report and Service Outage Report*, M-00051900 (Order entered December 30, 2005).

<sup>8</sup> *Petition of the Office of Consumer Advocate for a Rulemaking to Amend 52 Pa. Code Chapter 63 (relating to Telephone Service)*, P-00021985 (Order entered February 13, 2006).

cient to satisfy the exceptions set forth in section 3015(f)(1)(i). Therefore, the Commission decided to eliminate the Accident Report.

PTA's comments on these reports are outside the scope of this rulemaking. The Commission bifurcated the process and has rendered a decision on the issue of the Lifeline Tracking, Service Outage, and Accident Reports in its December 30, 2006, Order.

None of the commenting parties to that separate proceeding appealed the Commission's decision. Therefore, the Commission's Final Order stands.

The Commission did not receive any other comments to the proposed rulemaking. Thus, the Commission's regulations should be amended in accordance with Annex A attached. The amendments include eliminating the financial (earnings) report, the annual depreciation report, the capital investment plan report, service life study report, the quarterly cramming reports, the quarterly slamming reports, and the accident reports. In addition, the regulations will be updated to incorporate the interest rate for customer deposits as set forth in Chapter 14<sup>9</sup> and to amend the language to require the filing of residential account information on an annual basis rather than on a quarterly basis as currently prescribed by 52 Pa. Code § 64.201(b).

On an administrative note, the Commission would like to correct a ministerial oversight that occurred in 1998 in a prior Final Rulemaking Order regarding Chapter 64 Standards and Billing Practices for Residential Telephone Service at L-00960113. The Final Rulemaking Order there referenced the deletion of § 64.22(1); however, neither the ordering paragraphs nor Annex A included the deletion of § 64.22(1).

The Order was published July 18, 1998 at 28 Pa. B. 3379. The Order contained the following discussion explaining the revision of § 64.2, Definition of Dispute:

Accordingly, the final version of the definition of "dispute" will retain the elimination of IXC billing data as disputable subject matter under the chapter 64 provisions. Given this change in the definition of "dispute," the final regulations will delete § 64.22(1) since the LECs will no longer be responsible for settling IXC-related complaints.

Although the definition of "dispute" was revised as set forth above in the Order, the Annex A regulations attached to the Order did not include the deletion. Therefore, to correct the oversight and to ensure the language is consistent between §§ 64.2 and 64.22, the Commission hereby directs that § 64.22(1) be deleted to correct the administrative oversight in the prior rulemaking. Since the passage of the 1998 final rulemaking, the Commission noted this oversight and has taken steps to revise internal procedures accordingly, but has awaited this opportunity to formally correct the text of the regulation.

*Conclusion*

Accordingly, under sections 501 and 1501 of the Public Utility Code (66 Pa.C.S. §§ 501 and 1501); sections 201 and 202 of the act of July 31, 1968 (P. L. 769 No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section 745.5 of the Regulatory Review Act (71 P. S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P. S. § 232), and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.235, we find

that the regulations amending the general rules, procedures, and standards to eliminate certain reports and other amendments as set forth in Annex A should be approved; *Therefore,*

*It Is Ordered That:*

1. The regulations of the Commission, 52 Pa. Code Chapters 63, 64, 71 and 73, are amended by amending §§ 64.23, 64.41, 64.201, 71.3, 73.5 and 73.7 to read as set forth at 36 Pa.B. 1897; and by deleting § 63.11 and by amending §§ 64.22 and 73.3 to read as set forth in Annex A.

(*Editor's Note:* The amendment of § 64.22 was not included in the proposed rulemaking published at 36 Pa.B. 1897.)

2. The Secretary shall certify this order, 36 Pa.B. 1897 and Annex A and deposit them with the Legislative Bureau for publication in the *Pennsylvania Bulletin*.

3. The Secretary shall submit this order, 36 Pa.B. 1897 and Annex A to the Office of Attorney General for approval as to legality.

4. The Secretary shall submit this order, 36 Pa.B. 1897 and Annex A to the Governor's Budget Office for review of fiscal impact.

5. The Secretary shall submit this order, 36 Pa.B. 1897 and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.

6. A copy of this order, 36 Pa.B. 1897 and Annex A shall be served upon the Pennsylvania Telephone Association, the Office of Consumer Advocate, the Small Business Advocate and active parties to this proceeding.

7. The final regulations become effective upon publication in the *Pennsylvania Bulletin*.

8. The contact person for this rulemaking is Kimberly Hafner, Assistant Counsel, Law Bureau, (717) 787-5000. Alternate formats of this document are available to person with disabilities and may be obtained by contacting Sherri Delbiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

JAMES J. MCNULTY,  
*Secretary*

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 7082 (November 18, 2006).)

**Fiscal Note:** Fiscal Note 57-247 remains valid for the final adoption of the subject regulations.

**Dissenting Statements of Commissioner Terrance J. Fitzpatrick**

*Section 3015(f) Review Regarding the Lifeline Tracking Report, Accident Report and Service Outage Report; Public Meeting December 15, 2005; DEC-2005-L-0128\*; M-00051900*

I respectfully dissent from the Majority's conclusion that it may continue to require local exchange carriers (LECs) to file lifeline tracking reports and service outage reports pursuant to 66 Pa.C.S. § 3015(f), despite the fact that the General Assembly left these two reports off the list of reports that are authorized under Section 3015(e).

First, I would conclude that in order to require a report not listed in Section 3015(e), the Commission must find that both of the standards set forth in Section 3015(f)(1) have been met—that the report is necessary to ensure that a LEC's rates are in compliance, and that the benefits of the report substantially outweigh the expense and effort of preparing it. While these two requirements are not joined by a conjunction—"and" or "or"—that

<sup>9</sup> 66 Pa.C.S. § 1404(c)(6).

would make the intention of the General Assembly plain, a conclusion that both requirements must be met is consistent with the legislative intent to restrict the authority of the Commission to impose reporting requirements. See, 1 Pa.C.S. § 1921(b) (If the words of a statute are ambiguous, the intention of the General Assembly may be ascertained by considering, among other things, the occasion and necessity for the statute, the circumstances under which it was enacted, the mischief to be remedied, the object to be attained, and the consequences of a particular interpretation.)

Neither the lifeline tracking report nor the service outage report satisfy the requirement that the report is necessary to ensure that a LEC's rates are in compliance. With regard to the lifeline tracking report, an examination of that report makes clear that it is designed to track enrollment levels, not how rates are calculated. The mere fact that the Act defines "lifeline service" as a "discounted rate" offering (66 Pa.C.S. § 3012) does not change this conclusion since the report does not seek information as to whether any rate complies with applicable law.

Second, the argument that the service outage report may be required because quality of service is relevant to setting rates is unpersuasive. These reports seek information regarding isolated incidents rather than broad information that could be used to evaluate whether a utility is, in general, providing adequate service. Moreover, the Commission uses many tools to evaluate and improve service quality, but rate cuts are used very rarely. Since the nexus between these reports and a LEC's rates is remote, at best, the outage reports may not be required.

For the above reasons, I respectfully dissent.

*Final Rulemaking Order Regarding PUC Filing and Reporting Requirements of Local Exchange Carriers; Public Meeting August 17, 2006; AUG-2006-L-0053\*; L-00050176*

This matter involves a Final Rulemaking Order regarding filing and reporting requirements for Local Exchange Carriers. This Rulemaking Order eliminates certain reporting requirements in compliance with the new Chapter 30 Law, 66 Pa.C.S. §§ 3011—3019. For the following reasons, I respectfully dissent.

First, I agree with the elimination of the reports specified in the Rulemaking Order. However, consistent with my Dissenting Statement in a related docket,<sup>10</sup> I also believe that Lifeline Tracking Reports and Service Outage Reports should be eliminated. Accordingly, in my view, the list of reports to be eliminated by this Rulemaking is incomplete.

Second, I disagree with the implication on page 6 of the Rulemaking Order that the Commission's earlier Order (which determined that the Lifeline Tracking Report and Service Outage Report may continue to be required) is binding because it has not been appealed. In my view, this Order was unappealable because it was not an "adjudication." The Order was similar to the Commission's "Implementation Orders" in which it announced how it would interpret Chapter 14 of the Public Utility Code. The Commission has determined that these Implementation Orders constituted statements of policy rather than adjudications;<sup>11</sup> therefore, such orders were unappealable.

<sup>10</sup> Section 3015(f) Review Regarding the Lifeline Tracking Report, Accident Report, and Service Outage Report, Dkt. No. M-00051900, Dissenting Statement dated December 15, 2005.

<sup>11</sup> Chapter 14, Implementation, Dkt. No. M-00041802 F0002, Declaratory Order entered November 21, 2005.

## Annex A

### TITLE 52. PUBLIC UTILITIES

#### PART I. PUBLIC UTILITY COMMISSION

##### Subpart C. FIXED SERVICE UTILITIES

##### CHAPTER 63. TELEPHONE SERVICE

##### Subchapter B. SERVICES AND FACILITIES

##### § 63.11. (Reserved).

##### CHAPTER 64. STANDARDS AND BILLING PRACTICES FOR RESIDENTIAL TELEPHONE SERVICE

##### Subchapter B. PAYMENT AND BILLING STANDARDS

##### § 64.22. Billing service for interexchange carriers.

A LEC may provide billing services for interexchange carriers when the LEC applies its deposit rules.

##### CHAPTER 73. ANNUAL DEPRECIATION REPORTS, SERVICE LIFE STUDIES AND CAPITAL INVESTMENT PLANS

##### § 73.3. Annual depreciation reports.

(a) A public utility providing electric service, gas service or water service which has gross intraState revenues in excess of \$20 million per year, except telecommunications interexchange carriers and gas and petroleum transportation pipeline companies, shall file an annual depreciation report with the Bureau of Fixed Utility Services under this chapter.

(b) The due dates for the annual depreciation report are as follows:

(1) Electric, water and gas public utilities reports are due on or before June 30.

(2) When a public utility is also required to file a service life study report in the same year, the public utility shall notify the Secretary in writing, on or before the date its annual depreciation report would be due, stating that both the service life study and the annual depreciation report will be filed on or before August 31.

(3) When a public utility is required to file a depreciation report in response to a Commission Order, the report shall be prepared consistent with formats and filing deadlines specified in this chapter.

(c) The public utility shall file a copy of its annual depreciation report required by this chapter with the Office of Consumer Advocate and the Office of Small Business Advocate at the same time that it files the report with the Office of Special Assistants.

[Pa.B. Doc. No. 06-2449. Filed for public inspection December 15, 2006, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### [52 PA. CODE CH. 75]

[L-00050174]

#### Alternative Energy Portfolio Standards

The Pennsylvania Public Utility Commission (Commission) on June 22, 2006, adopted a final rulemaking order which promotes onsite generation by customer-generators using renewable resource and eliminates barriers which may have previously existed regarding net metering.

*Executive Summary*

Pursuant to 73 P. S. § 1648.5, the Public Utility Commission is required to develop regulations governing net metering within this Commonwealth through a stakeholder process. This rulemaking is the final rulemaking resulting from the stakeholder process and the notice of proposed rulemaking. The regulations govern the process by which a customer-generator, as defined by the Alternative Energy Portfolio Standards Act (73 P. S. §§ 1648.1—1648.8), can begin net metering electric usage and production from alternative energy resources. The regulations also provide for metering capabilities that will be required and a compensation mechanism which reimburses customer-generators for surplus energy supplied to the electric grid.

*Regulatory Review Commission*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 11, 2006, the Commission submitted a copy of the notice of proposed rulemaking published at 36 Pa.B. 1897 (April 22, 2006), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 1, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, the final-form rulemaking was deemed approved effective November 11, 2006.

Public Meeting held  
June 22, 2006

*Commissioners Present:* Wendell F. Holland, Chairman; James H. Cawley, Vice Chairman; Bill Shane; Kim Pizzingrilli, Statement follows; Terrance J. Fitzpatrick, Dissenting Statement follows

*Final Rulemaking Re Net Metering for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.5; L-00050174*

*Implementation of the Alternative Energy Portfolio Standards Act of 2004: Net Metering; M-00051865*

**Final Rulemaking Order**

*By the Commission:*

The Alternative Energy Portfolio Standards Act of 2004 (the Act), includes directives that the Commission develop regulations for net metering and interconnection for customer-generators. In accordance with Section 5 of the Act, 73 P. S. § 1648.5, the Commission formally commenced its rulemaking process to establish regulations governing net metering for customer-generators by issuing a Proposed Rulemaking Order at these Dockets by Order entered November 16, 2005 (Proposed Rulemaking Order). The Commission proposed regulations establishing protocols for net metering to be used by customer-generators under the Act and sought comments on those proposed regulations. Comments have been filed by the following parties: the Independent Regulatory Review

Commission (IRRC); the Department of Agriculture, the Department of Environmental Protection (DEP); The Honorable Michael L. Waugh, Pennsylvania State Senator on behalf of the Chesapeake Bay Commission; The Honorable Gibson C. Armstrong, Pennsylvania State Representative; Office of Consumer Advocate (OCA); Office of Small Business Advocate (OSBA); The Pennsylvania Farm Bureau; the Pennsylvania State Grange; the Energy Association of Pennsylvania (EAP); PECO Energy Company (PECO); PPL Electric Utilities Corporation (PPL); Citizens for Pennsylvania's Future (PennFuture); the Industrial Energy Consumers of Pennsylvania, the Met-Ed Industrial Users Group, the PP&L Industrial Customer Alliance, and the West Penn Power Industrial Intervenors (collectively, IECPA, et al.); American Mushroom Institute; Brubaker Farms; Citizens' Electric Company (Citizens') and Wellsboro Electric Company (Wellsboro); Keech Farm Service; Laurel Valley Farms; Lowe's Dairy; Mowrey's Sprucelawn Farms; Native Energy; Pine Hurst Acres; PV Now; RCM Biothane; Red Knob Farm; and Schrack Farms.

**BACKGROUND**

Section 5 of the Act, 73 P. S. § 1648.5, provides as follows:

The commission shall develop technical and net metering interconnection rules for customer-generators intending to operate renewable onsite generators in parallel with the electric utility grid, consistent with rules developed in other states within the service region of the regional transmission organization that manages the transmission system in any part of this Commonwealth. The commission shall convene a stakeholder process to develop Statewide technical and net metering rules for customer-generators. The commission shall develop these rules within nine months of the effective date of this act.

On March 3, 2005, the Commission convened an Alternative Energy Portfolio Standards Working Group (AEPS WG). The AEPS WG was established in order to provide a forum for considering the technical standards, business rules and regulatory framework necessary for Act 213's implementation. The Net Metering sub-group was formed out of the AEPS WG and was specifically tasked with developing proposed regulations governing net metering and interconnection standards.

The Net Metering sub-group met on several occasions to discuss and develop a set of proposed regulations in two parts. First, the Net Metering sub-group focused on Net Metering, the purpose of this rulemaking proceeding. Second, the Net Metering sub-group focused on interconnection standards, which is the subject of a separate rulemaking proceeding.

Participants in the Net Metering sub-group included representatives from Commission Staff, DEP, EAP, the Pennsylvania Farm Bureau, OCA, OSBA, PennFuture, the Small Generator Coalition with the Solar Energy Industries Association and several similar entities. As a result, the Net Metering sub-group had the benefit of a wide array of interests and broad expertise as it went through the process of developing proposed regulations.

At the initial meeting, participants were requested to discuss various issues which any net metering rulemaking would need to address. Following that meeting, Commission Staff issued a proposed issues list to the sub-group and called for comments to add any issues not already included and propose solutions. That issues list and call for comments was also posted on the Commis-

sion's web site. A second meeting was held to discuss the comments filed in response to the Staff generated issues list. On August 3, 2005, Commission Staff issued a proposed set of Net Metering regulations to the Net Metering sub-group and called for comments. The proposal was also posted on the Commission's web site.

Following the receipt of comments to the August 3, 2005 Staff proposal, the Commission adopted the Proposed Rulemaking Order. The Proposed Rulemaking Order was published 36 Pa.B. 571 (February 2, 2006). Comments were due 60 days from the date of publication. Comments have been received as set forth above.

### DISCUSSION

The Commission has reviewed each of the comments filed in this proceeding. We will address each of them as we go through the regulations seriatim.

#### Section 75.1. Definitions.

Many of the definitions in the proposed regulations merely state that a particular term or phrase shall have the same meaning as that set forth in the Act. In the final form regulations, we will provide the complete definition rather than just a reference to the Act. This will eliminate the need for a person to go to the Act for the definition. Also, the IRRC noted that to the extent cross references are used, they should be used consistently throughout the definitional section.

#### Customer-generator

#### Positions of the Parties

The proposed definition of customer-generator adopts the definition of that term as used in the Act. That definition specifically provides that a customer-generator is a "nonutility." DEP expresses the concern that the definition could be interpreted to exclude water utilities from participating in net metering. Accordingly, DEP requests that the Commission issue a clarifying statement that will remove barriers to non-electric utilities which desire to participate in net metering. Similarly, DEP requests that the Commission address the issue of net metering customers which do not meet the definition of "customer-generator," but who still desire to net meter.

#### Disposition

We will decline to adopt DEP's suggestions in the context of this proceeding. As set forth in Section 75.11, the scope of these regulations pertains to net metering for customer-generators as mandated by Section 5 of the Act. To the extent that net metering issues exist outside of the scope of these regulations, they will be dealt with through general Commission processes and utility tariffs. We note that any utility customer, including another utility, is free to propose regulations or other Commission action to address their specific circumstances.

#### Section 75.11. Scope.

#### Positions of the Parties

PECO comments that the scope of the regulations should be clarified to state that a peak MW limitation exists so as to be consistent with the Act. In addition, PECO states that net metering under the Act should be limited to Tier I resources because Section 5 of the Act provides that net metering should be provided for customer-generators intending to operate renewable onsite generators.

#### Disposition

The framework of the regulations is built around the needs of customer-generators, as that term is defined in the Act. That definition is repeated in Section 75.1 of the regulations. Since the Act defines customer-generator with capacity limitations depending on the nature of the use (residential service, other service and service available during grid emergencies), there is no need to restate those limitations in Section 75.11. The limitations are inherent in the term customer-generator.

We will decline to adopt PECO's suggestion that net metering be offered only for Tier I resources. PECO is correct that Section 5 of the Act references renewable onsite generators; however we do not find that inclusion of Tier II resources is inconsistent with the Act or the provisions of the Code.

#### Section 75.12. Definitions.

#### Avoided Cost of Wholesale Power

#### Positions of the Parties

The term is defined in the proposed regulations as the average locational marginal price (LMP)<sup>1</sup> of energy, or its successor, over the annualized period in the applicable EDC's transmission zone. This term was taken directly from the New Jersey Model. LMP is commonly defined as the cost of providing the next MW to a specific location in the least-cost manner given transmission constraints.<sup>2</sup> In response to our Proposed Rulemaking Order, the IRRC requested that we clarify our definition of the Avoided Cost of Wholesale Power. The IRRC also requested that we address the issue of why an average of avoided costs over the one year reporting period is the most appropriate methodology as opposed to the actual avoided cost for the specific billing period.

In comments to the Proposed Rulemaking Order, Citizens' and Wellsboro recommend that the Commission expand the definition of Avoided Cost of Wholesale Power to include an option for an EDC to base compensation for surplus generation on the actual avoided cost of wholesale power in lieu of the average annual LMP. Additionally the Companies state that it is inappropriate for the regulations to employ a proxy for the avoided cost of wholesale power when the actual avoided cost can be identified.

PPL and the EAP commented on this definition by suggesting that the "annualized period" be changed to "billing period."

#### Disposition

We agree with the IRRC that the definition of Avoided Cost of Wholesale Power should be clarified. We also agree with the other Parties commenting on this issue regarding the use of an actual cost of wholesale power in lieu of an annual average LMP. Additionally, we agree with the suggestion that we change "annualized period" to "billing period."

We support expanding the definition to allow an EDC to use the actual avoided cost of wholesale power when the EDC obtains the wholesale power supply to fulfill its POLR obligations through full-requirements, fixed rate contracts. Only currently effective binding contracts with identifiable negotiated rates may be relied upon to establish actual avoided cost.

<sup>1</sup> LMP was instituted in PJM in April 1998. Before then, there had been a single system price, the market-clearing price (MCP).

<sup>2</sup> See, National Regulatory Research Institute, publication 04-16, Commissioner Primer, LMP, at p. 9.

By changing “annualized period” to “billing period” we are also addressing the concerns of the IRRRC, the EAP and PPL. This change recognizes that compensation based upon billing cycle net deliveries will more closely reflect the avoided cost of wholesale power than an annualized average LMP. The same result occurs when we provide the option to an EDC to use actual costs when those costs are known from full-requirements, fixed rate supply contracts. Absent a known, fixed rate supply contract as described above, a billing period average LMP is an appropriate measure to determine compensation for billing period net deliveries into an EDC’s system. Therefore, the definition for the Avoided Cost of Wholesale Power is revised to read as follows:

*Avoided cost of wholesale power*—The actual cost of wholesale power avoided by the EDC, due to the operation of the customer-generator’s facility, pursuant to binding, full-requirements, fixed rate contracts, or, at the EDC’s option, the average locational marginal price (LMP) of energy, or its successor, over the billing period in the applicable EDC’s transmission zone.

**Annualized Period**

**Positions of the Parties**

In our Proposed Rulemaking order we defined annualized period to mean the same as reporting period as contained in the Act. The IRRRC recommended deletion of “annualized period” from § 75.12, and replacing it with the term “reporting period” throughout the regulation where we had previously used annualized period.

**Disposition**

Since this term has the same definition as “reporting period” as contained in Section 2 of the Act, 73 P. S. § 1648.2, we shall adopt the IRRRC’s recommendation.

**Equipment Package**

**Position of the Parties**

The IRRRC notes that equipment package is defined in the regulations but not used in the substantive provisions. The IRRRC recommends that we delete this definition.

**Disposition**

We will adopt the IRRRC’s suggestion.

**Meter Aggregation**

Most of the Parties commented on the proposed definitions of “meter aggregation,” “physical meter aggregation” and “virtual meter aggregation.” We will address those comments in our discussion of § 75.14.

**Net metering**

**Positions of the Parties**

The IRRRC recommended that the three part definition presented within our Proposed Rulemaking Order at § 75.12 be relegated to the body of the regulation. In support of this recommendation, the IRRRC stated that the regulatory language includes substantive provisions regarding credits and costs, which are not appropriate for definitional sections. The IRRRC recommended that the statutory definition of Net Metering at 73 P. S. § 1648.2 be used in § 75.12. PECO also suggested similar treatment.

**Disposition**

We agree with the IRRRC and PECO and shall adopt the statutory definition found at Section 2 of the Act as the regulatory definition for Net Metering presented at § 75.12 of our regulations. The substantive provisions contained in the proposed § 75.12 are already found in §§ 75.13(c)—(f).

**Section 75.13. General Provisions.**

**First Come, First Served**

Section 75.13(a) of the proposed regulations provides that EDCs shall offer net metering to customer-generators on a “first come, first served basis.” Several Parties expressed concerns regarding a perceived cap on the number of customer-generators that would be permitted to net meter.

**Positions of the Parties**

The IRRRC notes that the Act mandates certain minimum percentages of Tier I and Tier II alternative energy sources for EDCs and EGSs. The IRRRC expresses the concern that if net metering is restricted by a first come, first served process, the EDCs and EGSs may not be able to obtain the required percentages of Tier I energy. The IRRRC suggests that this section be amended to provide flexibility to the EDCs and EGSs in order to enable them to meet the required percentages.

Both PennFuture and PV Now commented that a first come, first served limitation could result in larger Tier II resources taking up allotted net metering capacity at the expense of Tier I resources such as solar. PennFuture and PV Now recommend that the Commission act to preserve some capacity for Tier I resources.

**Disposition**

The use of a “first come, first served” process in the regulation establishes a queue for the processing of net metering requests. A secondary reason for the first come, first served process is the recognition that the physical capacity of any given distribution system to manage net metering and the potential for surplus energy to flow onto a particular distribution circuit is finite. At this point in time, it is simply impossible to project whether or when any given distribution circuit will reach its maximum limit for net metering. Accordingly, we will not establish a reserve capacity for Tier I resources in this rulemaking. In the event that a situation arises which suggests a need for such a reservation, the Commission can take appropriate action at that time.

We will also respectfully decline to adopt the IRRRC’s suggestion. The Act does place certain requirements on EDCs and EGSs regarding alternative energy sources. However, the bulk of those requirements will be met in the market place outside of net metering activity by customer-generators. The size and nature of the projects subject to the Act’s net metering requirements are such that they are not expected to provide sufficient amounts of generation to enable EDCs and EGSs to meet the Act’s requirements from those sources alone. While it is hoped that net metering projects subject to these regulations will provide some surplus alternative energy, the principal objective of the Act’s net metering provision is to provide incentives to small customer-generators to use alternative energy sources.



**EGS Net Metering—§§ 75.13(a) and (b)**

The proposed regulations expressly permit, but do not require, EGS's to offer net metering programs to their customers. Section 75.13(b) directs EDCs to develop net metering protocols which will enable EGSs to offer net metering programs over the EDCs' systems.

**Positions of the Parties**

DEP suggests that EDCs should be required to "encourage" EGSs to offer net metering. DEP also recommends setting a specific filing deadline for EDC tariffs. EAP comments that an EGS net metering program should not impact EDC distribution charges. In addition, EAP suggests that it be made clear that stranded cost treatment applies to EGS customers as well as EDC customers. Also, EAP requests that EGS programs must be consistent with the competitive metering rules of the applicable EDC territory. Finally, EAP requests that EGS net metering programs may only be offered under the two-bill, rate ready protocol. PECO suggests that § 75.13(a) should clearly state that EGSs must coordinate their programs with EDCs. PPL offers comments similar to those presented by the EAP.

**Disposition**

The proposed regulations purposely do not mandate specific provisions for EGS net metering programs. As set forth in the Proposed Rulemaking Order, we hope that EGSs will offer competing net metering products, but we decline to direct them to do so, leaving that type of decision to the market. Consistent with that position, we will not direct EDCs to encourage EGSs to offer net metering products. Also, once the regulations actually become effective, the Commission can direct that conforming tariffs be filed on or before a date certain by Order. We need not specify a time within the regulations.

The comments of the EAP, PECO and PPL are well founded. First, Section 2808(a) of the Code does not relieve a customer of its stranded cost obligation when the customer is served by an EGS. Nothing in this rulemaking conflicts with that provision or changes it in any way. Accordingly, while the comments on this issue are correct, we do not find a need to address it in this rulemaking.

Second, it will be necessary for any EGS offering a net metering product to coordinate its program with the EDC providing distribution services. To that end, we directed each EDC to establish protocols enabling EGSs to offer net metering. Issues such as the two-bill, rate ready protocol and compliance with competitive metering programs can be readily addressed in the net metering protocols directed in § 75.13(b). Those types of issues will be better addressed by EGSs and EDCs as implementation occurs and the EDCs develop the necessary protocols in their tariffs. They do not readily lend themselves to regulatory treatment. Accordingly, we will not address them in these regulations. We note that those protocols must be approved by the Commission through the tariff process.

**Credit and Compensation—§ 75.13(c) and (d) (proposed §§ 75.13(c)—(e))**

Several Parties, including the IRRC, raised concerns regarding the credit methodology and cash-out provisions of the proposed regulations. The concerns regarding credit issues are more fully discussed in relation to § 75.14(a) and (b) relating to metering. Concerns regarding the cash-out provisions for excess electricity supplied to the grid have already been addressed in our discussion of the

definition of Avoided Cost of Wholesale Energy, above. As noted there, we have adopted the recommendation of the IRRC, the EAP and PPL and moved to a billing period payment rather than an annual reconciliation as originally proposed. We have changed former § 75.13(c) to recognize the revised treatment of meter aggregation programs. We have revised § 75.13(d) to provide for a monthly cash-out for excess generation supplied by customer-generators.

**Insurance Requirements—§ 75.13(j) (proposed § 75.13(k))****Positions of the Parties**

Citizens and Wellsboro request that proposed § 75.13(k) (now § 75.13(j)) be amended to require insurance for certain projects above a stated generating capacity limit.

**Disposition**

We will decline to adopt an insurance requirement at this time. EDCs and EGSs offering net metering programs may encourage customer-generators who decide to net meter to obtain insurance, but we will not mandate an insurance requirement. As the Commission developed the proposed regulations, an overwhelming majority of comments strongly recommended against such a requirement. Citizens and Wellsboro have added nothing to the discussion which convinces us that such a requirement is necessary.

**§ 75.14. Meters and Metering****Single Bi-Directional Meter & Dual Meter Arrangements—§ 75.14(a)(b)**

Under § 75.14(a), the proposed regulations require that a customer-generator facility used for net metering be equipped with a single bi-directional meter that can measure and record the flow of electricity in both directions at the same rate. A dual meter arrangement may be substituted for a single bi-directional meter if the customer-generator agrees. Subsection (b) provides that if the customer-generator's existing metering equipment does not meet these requirements, the EDC must install new metering equipment at the EDC's expense.

**Positions of the Parties**

The EAP, Citizen's, Wellsboro, PPL, PECO and OSBA support a dual meter approach as opposed to the single bi-directional approach provided in Subsection (a) of the proposed regulations. Citizen's and Wellsboro note that nothing in the Act mandates that the Commission adopt a single meter approach to net metering. PECO adds that the customer-generator should not have the ultimate authority as to whether or not the dual meter arrangement is utilized.

As explained by PPL, under the dual meter approach, the customer is billed for delivery service in the same way that any other customer taking service on the same Rate Schedule is billed. The customer-generator is separately compensated for generation, Credits and any other attributes. The single-meter approach involves the netting of kilowatt-hours delivered to the customer and kilowatt-hours generated by the customer to produce a single bill calculated using delivery rates. EAP believes that the single meter approach results in all other ratepayers unreasonably subsidizing the distribution service for customer-generators. The OSBA adds that under the single meter approach, customer-generators would pay the CTC and ITC only on the difference between the kWh delivered to the customer-generator by the EDC and the

kWh sent by the customer-generator over the EDC's distribution system. Since the customer-generator would pay the CTC or ITC on too few kWhs, the EDC would experience a shortfall. OSBA recommends that Subsection (a) be modified to ensure that the metering equipment must make a separate recording of the flow of electricity in each direction.

DEP recommends that the Commission establish a required meter accuracy standard in this rulemaking. DEP also recommends removing the phrase "and record" from the metering requirements out of a concern that this could lead to a misinterpretation of the section.

The IRRC suggests that the Commission should consider all of the possible metering alternatives in relation to the comments and explain why the metering approach selected is the best alternative.

### **Disposition**

In response to the IRRC recommendation, the Commission reviewed the metering approach provided in the proposed regulations recommending a single bi-directional meter. The approach in the proposed regulations is a one-for-one kWh credit generated from the customer-generator. This methodology lends itself to a single, bi-directional meter approach. We also note that due to the treatment of stranded costs in § 75.15, the loss of any stranded costs would be minimal. In addition, certain minimum charges applicable to specific rate schedules will still be paid.

In the event that the EDC's meter would not be capable of operating in a bi-directional mode, then a dual meter application would be permitted at the EDC's expense. Bi-directional meters provide an immediate impact on the customer's bill while reducing administrative costs, an important factor in the successful implementation of net metering. The intent of the Act is to encourage the increased use of alternate energy and provide an immediate positive feedback to the customer-generator. Also, the intent of this Section is to provide some flexibility for the meter arrangement. However, the credit mechanism remains a kWh credit per kWh produced for the billing cycle. We note that this is consistent with the New Jersey credit mechanism.

With regard to DEP's comments regarding the phrase "and record," we do not share the concern that the phrase will lead to a misinterpretation of the Section. The Regulations specifically state that the credit mechanism is a kWh-for-kWh credit. Thus, the ability to record energy produced and used will not affect the credit mechanism, but may become important in determining the production of renewable energy credits. We also note that the Commission's Regulations governing meter accuracy currently found at 52 Pa. Code §§ 57.20 and 57.21 remain in force. Accordingly, there is no need for an additional meter accuracy standard in this chapter.

### **Alternative Energy Credit Ownership—§ 75.14(d)**

Under § 75.14(d), the proposed regulations provide that in cases where a customer-generator expressly rejects ownership of the alternative energy credits, the EDC may secure ownership by supplying additional metering equipment if necessary.

### **Positions of the Parties**

The OCA and the IRRC recommend that it must be made clear in the regulation that any solicitation from the EDC requesting that a customer give up title to credits can only be made in the context of a full and accurate description of the options open to the customer.

The OCA and the IRRC suggest that the proposed regulations should be revised to incorporate a requirement that the EDC fully inform the customer of the value of the credits and other options for the credits.

PennFuture and PV Now comment that the regulations should clarify that the owner of the customer-generator facility, who invested in the technology, is the default owner of the alternative energy credits produced, unless the owner enters into a contract to do otherwise.

Citizens, Wellsboro, EAP, and PPL all suggest that any alternative energy credits produced by customer-generators should be owned by the customer-generator's EDC. The Parties state that once a kWh for kWh credit methodology is established, ownership of alternative energy credits should inure to the benefit of the EDC and its ratepayers.

### **Disposition**

The OCA and the IRRC have raised legitimate concerns. We will add a provision to the regulations requiring EDCs, prior to gaining title to alternative energy credits, to fully inform customer-generators of the potential value of those credits and other options for disposing of those credits. The Commission will modify the regulations accordingly.

PennFuture and PV Now are correct that the regulations as proposed assume that the customer-generator is the owner of any renewable energy credits produced by the onsite generation. (§§ 75.13(h) and 75.14(c) and (d)). While those two Parties recommend a change in the regulations to provide that the owner of the generation facility owns the credits, we will decline to do so. The focus of these regulations is on customer-generators and how they may net meter pursuant to the Act. Nothing in the regulations or the Act precludes a customer-generator from divesting any ownership interest in renewable energy credits produced. In fact, § 75.13(h) expressly provides for those situations. We would expect that in the circumstances described by PennFuture and PV Now, the parties to the transaction would have some form of written agreement governing credit ownership. Such an arrangement would be fully consistent with the Regulations as currently proposed.

We will also decline to provide that ownership of alternative energy credits will be vested in the customer-generator's EDC. Ownership of alternative energy credits produced by onsite generation properly rests with the customer-generator unless a different arrangement has been agreed to by the customer-generator.

### **Meter Aggregation—§ 75.14(e)**

In the Proposed Rulemaking Order we proposed a restrictive definition of meter aggregation, limiting aggregation to a single rate class and to adjacent and contiguous properties owned and operated by a customer-generator. (*See*, §§ 75.12 and 75.14(e)). The IRRC requested an explanation of the limits for meter aggregation regarding rate class and property locations as well as the necessity and appropriateness of the limitations.

### **Positions of Parties**

This section of the regulations also sparked the interest of seventeen commenters. The comments were in disagreement with the restrictive definition of meter aggregation and the meter location issue. We heard from farmers which operate anaerobic digesters such as Red Knob Farms, Mowrey's Sprucelawn Farms, Brubaker Farms, Laural Valley Farms, Keech Farm Services, LTD, Lowes Dairy, Pine Hurst Acres, Schrack Farm Partner-

ship, and the American Mushroom Institute. Additional support for modifications were advanced by RCM Biothane, PV Now, Native Energy, PennFuture, DEP, the Pennsylvania Grange, the Pennsylvania Farm Bureau, the Chesapeake Bay Commission through Senator Waugh, Representative Armstrong and the Department of Agriculture.

Alternatively, EAP, Exelon, PPL and Citizens Electric, and Wellsboro recommended that the provision for virtual meter aggregation be deleted in its entirety and providing only for physical meter aggregation at the customer-generator's expense.

#### **Disposition**

The fundamental intent of Act is the expansion and increased use of alternative energy systems and energy efficiency practices. Regulatory and economical barriers have been in place that prevented systems such as anaerobic digesters from being more economical or further developed. This rulemaking provides an opportunity to advance the use of these alternative energy systems in a way that will benefit the customer-generator, ratepayers and the environment by allowing exceptions for this important class of customers. Accordingly, we will permit virtual meter aggregation for customer-generators.

As pointed out by the Pennsylvania Farm Bureau, the proposed definition and application of virtual meter aggregation do not fit the reality of a typical Pennsylvania farm operation that has adequate animal units to produce required amounts of manure for anaerobic digesters to operate efficiently. The Pennsylvania Department of Agriculture recently surveyed 26 farms in the state that either have manure digesters operating, digesters under construction or in the planning stages. Out of the 21 farm operations that responded to the survey, there are 148 individual meters involved, which represents an average of seven meters per farm.

Additionally, a study completed by Dr. James Cobb from the University of Pittsburgh, in 2005, titled *Anaerobic Digesters on Dairy Farms*, indicates a potential of 50-60 digesters being developed on Pennsylvania dairy farms in the foreseeable future. The digesters will not be developed to this extent if the proposed metering aggregation restrictions remain in place. In addition, PennFuture directed our attention to other types of projects which could meet the requirements for customer-generator net metering, but would be unable to avail themselves of virtual meter aggregation under the regulations as proposed.

Penn Future's comments are well directed and provide language that will help alternative generation expand as envisioned by the Act. First, the definition of "meter aggregation" should be changed to allow aggregation regardless of rate class on properties owned and/or leased and operated by a customer-generator. We have changed the regulations accordingly. Second, the issue of multiple rate classes can be addressed by first applying onsite generation to the meter through which the system feeds. Any excess energy generated would be credited equally to the other service meters on the farm location, allowing each meter to maintain its current rate class. Additionally, we will modify the language in § 75.14(e) from "contiguous and adjacent properties owned and operated by the customer-generator" to owned and /or leased parcels within two miles of the customer-generator's property lines to allow customer-generators to participate in net metering on a better economic footing. The customer-generator must be served by one EDC.

### **§ 75.15. Treatment of Stranded Costs**

#### **Positions of the Parties**

In our Proposed Rulemaking Order we stated that if a net metering small commercial, commercial or industrial customer's annual self-generation resulted in a 10% or more reduction in distribution services and electricity purchases from the EDC when compared with the prior annual period, that net metering customer shall be responsible for its share of stranded costs, based upon the prior annual period, or base period if applicable. In its comments the IRRC questioned how the threshold of 10% or more was determined to be appropriate and would not compromise the utility's recovery of costs. The OSBA commented that 10% was not a de minimus amount and would result in other customers subsidizing the customer-generators' stranded cost obligation. In addition, the OSBA commented that a customer-generator would only pay stranded costs on the difference between kWh delivered and kWh used. According to the OSBA, this would result in a shortfall to the EDC which would have to be recovered from other ratepayers.

Several Parties commented that the stranded cost obligation should be waived altogether or receive some type of credit tied to the alternative generation. These included the Department of Agriculture, Native Energy, the Pennsylvania Farm Bureau, Pine Hurst Acres, PV Now, RCM Biothane, and Schrack Farms.

#### **Disposition**

As we set forth in the Proposed Rulemaking Order, when onsite generation results in "significantly" reduced purchases, a proportionate share of stranded cost recovery is mandated by Section 2808(a) of the Public Utility Code (Code), 66 Pa.C.S. § 2808(a). The OSBA's comments regarding a shortfall in stranded cost recovery completely ignores the operation of Section 2808(a) of the Code. Also, Section 2808(a) does not provide for a "de minimus" standard. The standard is a significant reduction in usage as a result of onsite generation. During the Commission's restructuring implementation, most of the EDCs issued tariff provisions which stated that a significant reduction in use for purposes of Section 2808(a) meant a reduction in use of 10% or more. Since the time those tariff provisions have been in effect, the Commission has received no complaints that such a threshold has operated to the detriment of any particular rate class or EDC. That is the basis for our use of the 10% threshold here.

Because of the requirements of Section 2808(a) of the Code we have no authority to adopt those comments which recommend a waiver or credit of stranded costs for customer-generators. Similarly, given our experience with the use of the 10% threshold, we decline to alter that threshold in this rulemaking.

#### **Cost Recovery**

#### **Positions of the Parties**

Several Parties have requested that to the extent that costs are incurred by EDCs for the provision of net metering, a section should be added to this Chapter which expressly provides that such costs are recoverable under Section 3(a)(3) of the Act, 73 P. S. § 1648.3(a)(3). These Parties include Citizens, Wellsboro, EAP and PPL.

#### **Disposition**

We will not address this issue in the context of this rulemaking. Section 3(a)(3) of the Act provides a description of the categories of recoverable costs and the mecha-

nism available to seek recovery. This proceeding is not the appropriate vehicle to address issues arising under that Section of the Act.

**CONCLUSION**

The modifications discussed herein address the concerns of the Parties and are in the public interest. We have reviewed all of the comments and, to the extent a Party's position was not adopted, it was nonetheless carefully considered. We wish to compliment all those who filed comments on the quality of the comments. They were extraordinarily helpful in arriving at a final rulemaking that is consistent with the Act, the Code and fulfills the Act's intent to remove barriers to net metering and provide appropriate treatment to customer-generators who wish to net meter.

Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. §§ 501; section 5 of the Alternative Energy Portfolio Supply Act of 2004 (73 P. S. § 1648.5); sections 201 and 202 of the act of July 31, 1968, (P. L. 769 No. 240) (45 P. S. §§ 1201 and 1202), and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. 732.204(b)); section 5 of the Regulatory Review Act (71 P. S. § 745.5) and section 612 of The Administrative Code of 1929 (71 P. S. § 232) and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234, the Commission adopts the regulations at 52 Pa. Code §§ 75.1—75.15, as noted above and as set forth in Annex A; *Therefore,*

**It Is Ordered that:**

1. The regulations of the Commission, 52 Pa. Code, are amended by adding §§ 75.1 and 75.11—75.15 to read as set forth in Annex A.
2. The Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by IRRC.
3. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
4. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
5. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
6. A copy of this order and Annex A be served upon the Department of Environmental Protection, all jurisdictional electric utility companies, licensed electric generation suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate and all Parties filing comments in this proceeding.
7. These regulations shall become effective upon publication in the *Pennsylvania Bulletin*.
8. The contact persons for this rulemaking are Calvin Birge, Bureau of Conservation, Economics and Energy Planning, (717) 783-1555 (technical), and H. Kirk House, Office of Special Assistants, (717) 772-8495 (legal).

JAMES J. MCNULTY,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 782 (November 18, 2006).*

**Fiscal Note:** Fiscal Note 57-244 remains valid for the final adoption of the subject regulations.

*Implementation of the Alternative Energy Portfolio Standards Act of 2004*

Public Meeting June 22, 2006  
JUN-2006-OSA-0174\*  
M-00051865  
L-00050174

**Dissenting Statement of Commissioner  
Terrance J. Fitzpatrick**

This matter involves a Final Rulemaking Order that adopts regulations governing net metering pursuant to the Alternative Energy Portfolio Standards Act, ("Act") 73 P. S. § 1648.1 *et seq.* Because I disagree with the resolution of three issues in the regulations, I respectfully dissent.

*Single Meter versus Dual Meter*

The regulations adopted by the majority endorse a single meter approach to net metering, under which a customer-generator's bill is credited on a kWh-for-kWh basis. The important point here is not so much the mechanics of how the metering works, but the impact on the customer-generator's bill. Under this single meter approach, the customer-generator's bill is credited not just for the energy it sells back to the utility, but also for the volumetric charges for the customer's use of the distribution system when the customer-generator takes electricity from the grid. This credit to distribution charges may properly be characterized as a subsidy—the customer-generator avoids paying for its use of the grid and that burden falls on the utility's shareholders, and, in the longer term, on the utility's general body of customers.

The definition of "net metering" in the Act describes it simply as the "means of measuring" the difference between the electricity supplied by the utility and the electricity generated by a customer-generator. 73 P. S. § 1648.2 (definition of "net metering"). Nothing in this definition suggests that customer-generators should be excused from paying for their use of the grid.

The Final Rulemaking Order (p. 17) states that the single meter policy is consistent with the net metering policy adopted in New Jersey. That fact is relevant in that the Act provides, among other things, that the Commission should look to be consistent with rules adopted by other states in the region. 73 P. S. § 1648.5. The Act does not, however, mandate that we march in lockstep with any other particular state, so the policies we adopt still must make sense in light of the language of the Act. In my view, nothing in the Act suggests that the use of the distribution system by customer-generators should be subsidized by others.

I agree with the comments of those parties who argue for a dual meter approach to net metering, under which a customer-generator's usage of electricity taken from the utility's grid would be measured separately from the electricity generated by the customer-generator. This would allow the utility to collect distribution charges on electricity supplied to the customer-generator, while still crediting the customer-generator for the electricity it generates. This approach has the added benefit of measuring the actual amount generated by the customer-generator for purposes of establishing the value of tradable alternative energy credits.

*Virtual Meter Aggregation*

The issue here is how to determine the number of accounts under which a customer-generator will be billed by the utility. This is important because, under rate schedules approved by this Commission, utilities recover some of their costs by charges on each account. Thus, if the Commission now adopts a policy that reduces the number of accounts, this impairs the ability of utilities to collect their costs. The governing principle in this area has been that each physical point of service is a separate account, unless usage on an established circuit grows to the point that the utility, for its own convenience, establishes an additional point of service to relieve the circuit. In addition, the settled practice is that a customer can only consolidate its number of accounts if it bears the expense of physically rewiring circuits to establish a single point of service.

The final regulations adopted by the Majority waive these principles for customer-generators. Under the "virtual meter aggregation" policy in these regulations, customer-generators will be permitted to establish a single account for parcels of land owned or leased by the customer-generator within two miles of the customer-generator's property lines. This extends the virtual aggregation policy set out in the proposed regulations, under which operations on contiguous parcels owned by the customer-generator would have been permitted to establish a single account.

The Final Rulemaking Order (p. 21) describes its action on this issue as removing "regulatory and economic barriers" that have prevented development of customer-generation. That is true only in the sense that withholding preferential treatment can be characterized as a "regulatory or economic barrier." The established principles governing meter aggregation are designed to allow utilities to recover costs and to apportion these costs equitably among customers. The Final Rulemaking Order fails to acknowledge that the benefits it bestows on customer-generators result in additional burdens placed on others—utility shareholders and, in the long run, on the general body of customers. Nothing in the Act suggests that established meter aggregation principles should be waived to provide additional subsidies for customer-generators.

*Ownership of Alternative Energy Credits*

The final regulations assume that ownership of the alternative energy credits arising from net-metered generation rests with the customer-generators, unless otherwise agreed to by the customer-generator and the utility. This is assumed despite the statutorily-compelled purchase of this energy by the utility, and the subsidies and preferential treatment granted to customer-generators in the final regulations.

Under all of the circumstances, I believe that the utilities should be deemed to own the credits for the benefit of the general body of customers. Placing ownership of the credits with the utility would offset, to some extent, the burdens placed on other customers by the subsidies and preferences described above in the final regulations.

*Conclusion*

The General Assembly has determined in the Act that alternative forms of electric generation should be encouraged. In order to do so, it required that retail suppliers of electricity (utilities and competitive electric suppliers)

purchase increasing percentages of alternative energy as part of their portfolio of supplies used to serve end-use customers. This assures that there will be a demand for alternative energy, even though alternative energy is generally more expensive than energy from conventional sources. Further, the General Assembly has required electric utilities to provide interconnection and net metering to customer-generators of alternative energy. While these measures can be expected to raise electricity prices, the General Assembly has determined that this price is justified in order to encourage development of alternative energy.

The final regulations regarding net metering adopted by the Commission grant subsidies and preferences for customer-generators beyond those established in the Act. The burden of paying for these policies will ultimately fall upon other customers during a period when rising fuel prices and more stringent environmental controls are already reversing a two-decade long trend of static electricity prices. For these reasons, I respectfully dissent.

**Statement of Commissioner Kim Pizzigrilli***Implementation of the Alternative Energy Portfolio Standards Act of 2004—Net Metering*

Public Meeting June 22, 2006  
JUNE-2006-OSA-0174\*  
M-00051865  
L-00050174

Today the Commission issues a final rulemaking relating to net metering for customer-generators intending to operate renewable onsite generators in parallel with electric distribution utilities' distribution systems. This rulemaking is another important component of the Commission's mission to successfully implement the Alternative Energy Portfolio Standards Act (AEPS). The regulations are the culmination of an extensive proceeding, which included an AEPS working group focused on net metering as well as significant input on proposals prior to the initiation of the formal proposed rulemaking.

When promulgating any set of new regulations, particularly ones of a highly technical nature such as these, it is imperative that we attempt to strike a balance on the competing perspectives on contentious issues. Here, in large part, we have successfully struck the necessary balance and I commend our staff and the parties to this proceeding for their efforts.

However, as is sometimes the case, the Commission was not able to find common ground on all issues raised by the parties. Here, in my opinion, the issue of one single bi-directional meter versus the use of dual meters is such an issue. Despite the existence of valid arguments on both sides of this matter, ultimately the Commission has determined to require the use of a single meter. While I will vote in support of these regulations, I share the concerns raised by Commissioner Fitzpatrick on this matter particularly relative to the single meter approach resulting in a subsidy provided to customer-generators by the electric distribution companies' other ratepayers.

In accordance with the Regulatory Review Act, the final regulations now require approval of the House and Senate Standing Committees, the Independent Regulatory Review Commission and the Attorney General prior to final publication.

**Annex A**  
**TITLE 52. PUBLIC UTILITIES**  
**PART I. PUBLIC UTILITY COMMISSION**  
**Subpart C. FIXED SERVICE UTILITIES**  
**CHAPTER 75. ALTERNATIVE ENERGY**  
**PORTFOLIO STANDARDS**

**Subchap.**

- A. GENERAL PROVISIONS**
- B. NET METERING**

**Subchapter A. GENERAL PROVISIONS**

**Sec.**

- 75.1. Definitions

**§ 75.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

*Act*—The Alternative Energy Portfolio Standards Act (73 P. S. §§ 1648.1—1648.8).

*Alternative energy credit*—A tradable instrument that is used to establish, verify and monitor compliance with the act. A unit of credit must equal 1 megawatt hour of electricity from an alternative energy source.

*Alternative energy sources*—The term includes the following existing and new sources for the production of electricity:

- (i) Solar photovoltaic or other solar electric energy.
- (ii) Solar thermal energy.
- (iii) Wind power.
- (iv) Large-scale hydropower, which means the production of electric power by harnessing the hydroelectric potential of moving water impoundments, including pumped storage that does not meet the requirements of low-impact hydropower.
- (v) Low-impact hydropower consisting of any technology that produces electric power and that harnesses the hydroelectric potential of moving water impoundments, provided the incremental hydroelectric development:
  - (A) Does not adversely change existing impacts to aquatic systems.
  - (B) Meets the certification standards established by the low impact hydropower institute and American Rivers, Inc., or their successors.
  - (C) Provides an adequate water flow for protection of aquatic life and for safe and effective fish passage.
  - (D) Protects against erosion.
  - (E) Protects cultural and historic resources.
- (vi) Geothermal energy, which means electricity produced by extracting hot water or steam from geothermal reserves in the earth's crust and supplied to steam turbines that drive generators to produce electricity.
- (vii) Biomass energy, which means the generation of electricity utilizing the following:
  - (A) Organic material from a plant that is grown for the purpose of being used to produce electricity or is protected by the Federal Conservation Reserve Program (CRP) and provided further that crop production on CRP lands does not prevent the achievement of the water quality protection, soil erosion prevention or wildlife enhancement purposes for which the land was primarily set aside.

(B) Solid nonhazardous, cellulosic waste material that is segregated from other waste materials, such as waste pallets, crates and landscape or right-of-way tree trimmings or agricultural sources, including orchard tree crops, vineyards, grain, legumes, sugar and other byproducts or residues.

(viii) Biologically derived methane gas, which includes methane from the anaerobic digestion of organic materials from yard waste, such as grass clippings and leaves, food waste, animal waste and sewage sludge. The term also includes landfill methane gas.

(ix) Fuel cells, which means any electrochemical device that converts chemical energy in a hydrogen-rich fuel directly into electricity, heat and water without combustion.

(x) Waste coal, which includes the combustion of waste coal in facilities in which the waste coal was disposed or abandoned prior to July 31, 1982, or disposed of thereafter in a permitted coal refuse disposal site regardless of when disposed of, and used to generate electricity, or other waste coal combustion meeting alternate eligibility requirements established by regulation. Facilities combusting waste coal shall use at a minimum a combined fluidized bed boiler and be outfitted with a limestone injection system and a fabric filter particulate removal system. Alternative energy credits shall be calculated based upon the proportion of waste coal utilized to produce electricity at the facility.

(xi) Coal mine methane, which means methane gas emitting from abandoned or working coal mines.

(xii) Demand-side management consisting of the management of customer consumption of electricity or the demand for electricity through the implementation of:

(A) Energy efficient technologies, management practices or other strategies in residential, commercial, industrial, institutional and government customers that shift electric load from periods of higher demand to periods of lower demand.

(B) Load management or demand response technologies, management practices or other strategies in residential, commercial, industrial, institutional and government customers that shift electric load from periods of higher demand to periods of lower demand.

(C) Industrial by-product technologies consisting of the use of a by-product from an industrial process, including reuse of energy from exhaust gases or other manufacturing by-products that are used in the direct production of electricity at the facility of a customer.

(xiii) Distributed generation systems, which means the small-scale power generation of electricity and useful thermal energy.

*Alternative energy system*—A facility or energy system that uses a form of alternative energy source to generate electricity and delivers the electricity it generates to the distribution system of an EDC or to the transmission system operated by a regional transmission organization.

*Competitive transition charge*—A nonbypassable charge applied to the bill of every customer accessing the transmission or distribution network which charge is designed to recover an electric utility's transition or stranded costs.

*Cost recovery period*—The longer of:

(i) The period during which competitive transition charges under 66 Pa.C.S. § 2808 (relating to competitive transition charge) or intangible transition charges under 66 Pa.C.S. § 2812 (relating to approval of transition bonds) are recovered.

(ii) The period during which an EDC operates under a Commission-approved generation rate plan that has been approved prior to or within 1 year of February 28, 2005, but the cost-recovery period under the act may not extend beyond December 31, 2010.

*Customer-generator*—A nonutility owner or operator of a net metered distributed generation system with a nameplate capacity of not greater than 50 kilowatts if installed at a residential service or not larger than 1,000 kilowatts at other customer service locations, except for customers whose systems are above 1 megawatt and up to 2 megawatts who make their systems available to operate in parallel with the electric utility during grid emergencies as defined by the regional transmission organization or where a microgrid is in place for the purpose of maintaining critical infrastructure, such as homeland security assignments, emergency services facilities, hospitals, traffic signals, wastewater treatment plants or telecommunications facilities, provided that technical rules for operating generators interconnected with facilities of an EDC, electric cooperative or municipal electric system have been promulgated by the institute of electrical and electronic engineers and the Commission.

*Department*—The Department of Environmental Protection of the Commonwealth.

*EDC—Electric distribution company*—The public utility providing facilities for the jurisdictional transmission and distribution of electricity to retail customers, except building or facility owners/operators that manage the internal distribution system serving the building or facility and that supply electric power and other related electric power services to occupants of the building or facility.

*EGS—Electric generation supplier*—

(i) A person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to December 16, 2006, brokers and marketers, aggregators or any other entities, that sells to end-use customers electricity or related services utilizing the jurisdictional transmission and distribution facilities of an EDC or that purchases, brokers, arranges or markets electricity or related services for sale to end-use customers utilizing the jurisdictional transmission and distribution facilities of an EDC.

(ii) The term excludes building or facility owner/operators that manage the internal distribution system serving the building or facility and that supply electric power and other related power services to occupants of the building or facility.

(iii) The term excludes electric cooperative corporations except as provided in 15 Pa.C.S. Chapter 74 (relating to generation choice for customers of electric cooperatives).

*Force majeure*—Upon its own initiative or upon a request of an EDC or an EGS, the Commission, within 60 days, will determine if alternative energy resources are reasonably available in the marketplace in sufficient quantities for the EDCs and the EGSs to meet their obligations for that reporting period under the act. If the Commission determines that alternative energy resources

are not reasonably available in sufficient quantities in the marketplace for the EDCs and EGSs to meet their obligations under the act, the Commission will modify the underlying obligation of the EDC or EGS or recommend to the General Assembly that the underlying obligation be eliminated.

*kW—Kilowatt*—A unit of power representing 1,000 watts. A kW equals 1/1000 of a MW.

*MW—Megawatt*—A unit of power representing 1,000,000 watts. An MW equals 1,000 kW.

*Municipal solid waste*—The term includes energy from existing waste to energy facilities which the Department has determined are in compliance with current environmental standards, including the applicable requirements of the Clean Air Act (42 U.S.C. §§ 7401–7671q) and associated permit restrictions and the applicable requirements of the Solid Waste Management Act (35 P.S. §§ 6018.101–6018.1003).

*RTO—Regional transmission organization*—An entity approved by the Federal Energy Regulatory Commission (FERC) that is created to operate and manage the electrical transmission grids of the member electric transmission utilities as required under FERC Order 2000, Docket No. RM99-2-000, FERC Chapter 31.089 (1999) or any successor organization approved by the FERC.

*Reporting period*—The 12-month period from June 1 through May 31. A reporting year shall be numbered according to the calendar year in which it begins and ends.

*Retail electric customer*—

(i) A direct purchaser of electric power.

(ii) The term excludes an occupant of a building or facility where the following apply:

(A) The owners/operators manage the internal distribution system serving the building or facility and supply electric power and other related power services to occupants of the building or facility.

(B) The owners/operators are direct purchasers of electric power.

(C) The occupants are not direct purchasers.

*Stranded costs*—An electric utility's known and measurable net electric generation-related costs, determined on a net present value basis over the life of the asset or liability as part of its restructuring plan, which traditionally would be recoverable under a regulated environment but which may not be recoverable in a competitive electric generation market and which the commission determines will remain following mitigation by the electric utility.

*Tier I alternative energy source*—Energy derived from:

(i) Solar photovoltaic energy.

(ii) Wind power.

(iii) Low-impact hydropower.

(iv) Geothermal energy.

(v) Biologically derived methane gas.

(vi) Fuel cells.

(vii) Biomass energy.

(viii) Coal mine methane.

*Tier II alternative energy source*—Energy derived from:

(i) Waste coal.

- (ii) Distributed generation systems.
- (iii) Demand-side management.
- (iv) Large-scale hydropower.
- (v) Municipal solid waste.
- (vi) Generation of electricity utilizing by-products of the pulping process and wood manufacturing process, including bark, wood chips, sawdust and lignin in spent pulping liquors.
- (vii) Integrated combined coal gasification technology.

*True-up period*—The period each year from the end of the reporting year until September 1.

**Subchapter B. NET METERING**

Sec.	
75.11.	Scope.
75.12.	Definitions.
75.13.	General provisions.
75.14.	Meters and metering.
75.15.	Treatment of stranded costs.

**§ 75.11. Scope.**

This subchapter sets forth net metering requirements that apply to EGSs and EDCs which have customer-generators intending to pursue net metering opportunities in accordance with the act.

**§ 75.12. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

*Avoided cost of wholesale power*—The actual cost of wholesale power avoided by the EDC, due to the operation of the customer-generator's facility, pursuant to binding, full-requirements, fixed rate contracts, or, at the EDC's option, the average locational marginal price (LMP) of energy, or its successor, over the billing period in the applicable EDC's transmission zone.

*Base year*—For customer-generators who initiated self generation on or after January 1, 1999, the base year will be the immediate prior calendar year; for all other customer generators, the base year will be 1996.

*Billing month*—The term has the same meaning as set forth in § 56.2 (relating to definitions).

*Customer-generator facility*—The equipment used by a customer-generator to generate, manage, monitor and deliver electricity to the EDC.

*Electric distribution system*—That portion of an electric system which delivers electricity from transformation points on the transmission system to points of connection at a customer's premises.

*Meter aggregation*—The combination of readings from and billing for all meters regardless of rate class on properties owned or leased and operated by a customer-generator for properties located within the service territory of a single EDC. Meter aggregation may be completed through physical or virtual meter aggregation.

*Net metering*—The means of measuring the difference between the electricity supplied by an electric utility or EGS and the electricity generated by a customer-generator when the alternative energy generating system is intended primarily to offset part or all of the customer-generator's requirements for electricity.

*Physical meter aggregation*—The physical rewiring of all meters regardless OF rate class on properties owned or leased and operated by a customer-generator to provide

a single point of contact for a single meter to measure electric service for that customer-generator.

*Virtual meter aggregation*—The combination of readings and billing for all meters regardless of rate class on properties owned or leased and operated by a customer-generator by means of the EDC's billing process, rather than through physical rewiring of the customer-generator's property for a physical, single point of contact.

**§ 75.13. General provisions.**

(a) EDCs shall offer net metering to customer-generators that generate electricity on the customer-generator's side of the meter using Tier I or Tier II alternative energy sources, on a first come, first served basis. EGSs may offer net metering to customer-generators, on a first come, first served basis, under the terms and conditions as are set forth in agreements between EGSs and customer-generators taking service from EGSs.

(b) An EDC shall file a tariff with the Commission that provides for net metering consistent with this chapter. An EDC shall file a tariff providing net metering protocols that enable EGSs to offer net metering to customer-generators taking service from EGSs. To the extent that an EGS offers net metering service, the EGS shall prepare information about net metering consistent with this chapter and provide that information with the disclosure information required in § 54.5 (relating to disclosure statement for residential and small business customers).

(c) The EDC shall credit a customer-generator at the full retail rate for each kilowatt-hour produced by a Tier I or tier ii resource installed on the customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that customer during the billing period. For customer-generators involved in virtual meter aggregation programs, a credit shall be applied first to the meter through which the generating facility supplies electricity to the distribution system, then through the remaining meters for the customer-generator's account equally at each meter's designated rate.

(d) At the end of each billing period, the EDC shall compensate the customer-generator for kilowatt-hours generated by the customer-generator over the amount of kilowatt hours delivered by the EDC during the billing period at the EDC's avoided cost of wholesale power.

(e) The credit or compensation terms for excess electricity produced by customer-generators who are customers of EGSs shall be stated in the service agreement between the customer-generator and the EGS.

(f) If a customer-generator switches electricity suppliers, the EDC shall treat the end of the service period as if it were the end of the billing period.

(g) An EDC and EGS which offer net metering shall submit an annual net metering report to the Commission. The report shall be submitted by July 30 of each year, and shall include the following information for the reporting period ending May 31 of that year:

- (1) The total number of customer-generator facilities.
- (2) The total estimated rated generating capacity of its net metering customer-generators.

(h) A customer-generator that is eligible for net metering owns the alternative energy credits of the electricity it generates, unless there is a contract with an express provision that assigns ownership of the alternative energy credits to another entity or the customer-generator expressly rejects any ownership interest in alternative energy credits under § 75.14(d) (relating to meters and metering).



(i) An EDC shall provide net metering at nondiscriminatory rates identical with respect to rate structure, retail rate components and any monthly charges to the rates charged to other customers that are not customer-generators. An EDC may use a special load profile for the customer-generator which incorporates the customer-generator's real time generation if the special load profile is approved by the Commission.

(j) An EDC may not charge a customer-generator a fee or other type of charge unless the fee or charge would apply to other customers that are not customer-generators. The EDC may not require additional equipment or insurance or impose any other requirement unless the additional equipment, insurance or other requirement is specifically authorized under this chapter or by order of the Commission.

(k) Nothing in this subchapter abrogates a person's obligation to comply with other applicable law.

#### § 75.14. Meters and metering.

(a) A customer-generator facility used for net metering must be equipped with a single bi-directional meter that can measure and record the flow of electricity in both directions at the same rate. If the customer-generator agrees, a dual meter arrangement may be substituted for a single bidirectional meter.

(b) If the customer-generator's existing electric metering equipment does not meet the requirements in subsection (a), the EDC shall install new metering equipment for the customer-generator at the EDC's expense. Any subsequent metering equipment change necessitated by the customer-generator shall be paid for by the customer-generator.

(c) When the customer-generator intends to take title or transfer title to any alternative energy credits which may be produced by the customer-generator's facility, the customer-generator shall bear the cost of additional net metering equipment required to qualify the alternative energy credits in accordance with the act.

(d) When the customer-generator expressly rejects ownership of alternative energy credits produced by the customer-generator's facility, the EDC may supply additional metering equipment required to qualify the alternative energy credit at the EDC's expense. In those circumstances, the EDC shall take title to any alternative energy credit produced. An EDC shall, prior to taking title to any alternative energy credits produced by a customer-generator, fully inform the customer-generator of the potential value of the alternative energy credits and other options available to the customer-generator for the disposition of those credits. A customer-generator is not prohibited from having a qualified meter service provider install metering equipment for the measurement of generation, or from selling alternative energy credits to a third party other than an EDC.

(e) Meter aggregation on properties owned or leased and operated by a customer-generator shall be allowed for purposes of net metering. Meter aggregation shall be limited to meters located on properties within 2 miles of the boundaries of the customer-generator's property. Meter aggregation shall only be available for properties located within a single EDC's service territory. Physical meter aggregation shall be at the customer-generator's expense. The EDC shall provide the necessary equipment

to complete physical aggregation. If the customer-generator requests virtual meter aggregation, it shall be provided by the EDC at the customer-generator's expense. The customer-generator shall be responsible only for any incremental expense entailed in processing his account on a virtual meter aggregation basis.

#### § 75.15. Treatment of stranded costs.

If a net metering small commercial, commercial or industrial customer's self-generation results in a 10% or more reduction in the customer's purchase of electricity through the EDC's transmission and distribution network for an annualized period when compared to the prior annualized period, the net metering small commercial, commercial or industrial customer shall be responsible for its share of stranded costs to prevent interclass or intraclass cost shifting under 66 Pa.C.S. § 2808(a) (relating to competitive transition charge). The net metering small commercial, commercial or industrial customer's stranded cost obligation shall be calculated based upon the applicable "base year" as defined in this chapter.

[Pa.B. Doc. No. 06-2450. Filed for public inspection December 15, 2006, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION [52 PA. CODE CH. 75]

[L-00050275]

### Alternative Energy Portfolio Standards

The Pennsylvania Public Utility Commission (Commission) on June 22, 2006, adopted a final rulemaking order which promotes onsite generation by customer-generators using renewable resources and eliminates barriers which may have previously existed regarding net metering.

#### *Executive Summary*

Pursuant to 73 P. S. § 1648.5, the Public Utility Commission is required to develop regulations governing interconnection standards within the Commonwealth through a stakeholder process. This rulemaking is the final regulation resulting from the stakeholder process. The regulation governs the process by which a customer-generator, as defined by the Alternative Energy Portfolio Standards Act (73 P. S. §§ 1648.1—1648.8), may interconnect onsite generation equipment to an electric utility's distribution lines. The regulations set forth specific levels of review and review criteria depending on the rated generation capacity of the generation equipment. The regulations also provide for a dispute resolution process to manage disputes which may arise during the interconnection process.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 15, 2004, the Commission submitted a copy of the notice of proposed rulemaking, published at 36 Pa.B. 942 (February 25, 2006) to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 1, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 2, 2006, and approved the final-form rulemaking.

Public Meeting Held  
August 17, 2006

*Commissioners Present:* Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane; Kim Pizzingrilli; Terrance J. Fitzpatrick

*Final Rulemaking Re Interconnection Standards for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P. S. § 1648.5; L-00050175*

*Implementation of the Alternative Energy Portfolio Standards Act of 2004: Interconnection Standards; M-00051865*

**Final Rulemaking Order**

*By the Commission:*

The Alternative Energy Portfolio Standards Act of 2004 (the Act), includes directives that the Commission develop regulations setting forth interconnection standards for customer-generators. In accordance with Section 5 of the Act, 73 P. S. § 1648.5, this constitutes the Commission's Final Rulemaking which establishes regulations governing interconnection for customer-generators as set forth in the Act.

**BACKGROUND**

Section 5 of the Act provides as follows:

The commission shall develop technical and net metering interconnection rules for customer-generators intending to operate renewable onsite generators in parallel with the electric utility grid, consistent with rules developed in other states within the service region of the regional transmission organization that manages the transmission system in any part of this Commonwealth. The commission shall convene a stakeholder process to develop Statewide technical and net metering rules for customer-generators. The commission shall develop these rules within nine months of the effective date of this act.

73 P. S. § 1648.5.

On March 3, 2005, the Commission convened an Alternative Energy Portfolio Standards Working Group (AEPS WG). The AEPS WG was established in order to provide a forum for considering the technical standards, business rules and regulatory framework necessary for the Act's implementation. The Net Metering sub-group was formed out of the AEPS WG and was specifically tasked with developing proposed regulations governing net metering and interconnection standards.

The Net Metering sub-group has met on several occasions since March 3 to discuss and develop a set of proposed regulations in two parts. First, the Net Metering sub-group focused on net metering. Second, the Net Metering sub-group focused on interconnection standards, which is the subject of this rulemaking proceeding.

Participants in the Net Metering sub-group have included representatives from Commission Staff, the Department of Environmental Protection (DEP), the Energy Association of Pennsylvania (EAPA) and several of its member companies, the Pennsylvania Farm Bureau, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), Citizens for Pennsylvania's Future (Penn Future), the Small Generator Coalition (SGC) with the Solar Energy Industries Association and several similar entities.

At the initial meeting, participants were requested to discuss various issues which any rulemaking involving interconnection standards would need to address. As the Net Metering sub-group moved forward with the interconnection standards stakeholder process, the Commission determined that the Mid-Atlantic Distributed Resource Initiative (MADRI) was also moving forward with a stakeholder process to develop model interconnection standards for small generators in the PJM Interconnection L.L.C. (PJM) footprint. MADRI is comprised of the public utility commissions of Pennsylvania, Delaware, the District of Columbia, New Jersey and Maryland, along with the United States' Department of Energy and PJM. Similar to the Pennsylvania process, stakeholders from the utility industry, consumer organizations, distributed generation interest groups and vendors along with the MADRI members were invited to participate in developing model interconnection standards.

On May 15, 2005, the Commission notified the Net Metering sub-group that it would hold the Pennsylvania interconnection standards process in abeyance, pending the development of a uniform model by the MADRI stakeholder process. Participants in Pennsylvania's Net Metering sub-group were strongly encouraged to participate in the MADRI interconnection process. Participants were advised that the Commission Staff would use the MADRI model as the basis for the Staff proposal which would lead to an Order proposing the interconnection standards rulemaking.

Following several meetings held in June, July and August of 2005, the MADRI stakeholder group advised Commission Staff that a draft model addressing interconnection standards was in sufficient form to merit consideration in the Pennsylvania process. Commission Staff received the MADRI model on or about August 19, 2005. On August 29, 2005, Staff issued its initial proposal (initial Staff proposal) to the Pennsylvania Net Metering sub-group and requested comments on or before September 19, 2005. The initial Staff proposal was based upon the MADRI model interconnection standards. In the notice for comments, Staff identified those areas where the initial Staff proposal modified the MADRI model and invited comments specifically directed to those modifications as well as any other areas participants wished to address.

Following the receipt of comments to the initial Staff proposal, the Commission issued its Notice of Proposed Rulemaking on November 16, 2005 (November NOPR). The November NOPR was developed based upon the MADRI model interconnection standards as of August 19, 2005, the initial Staff proposal which modified that model, and comments submitted through the Net Meter-

ing sub-group process. The foregoing is consistent with the Act's mandate that these regulations be developed through a stakeholder process.

Similar to the initial Staff proposal, the November NOPR sought comments on specific issues and invited comments on any other issues which interested persons wished to raise. The November NOPR was published at 36 Pa.B. 942 (February 25, 2006). Comments were due to be filed on or before April 26, 2006.

Comments to the November NOPR were filed by: the Independent Regulatory Review Commission (IRRC); the DEP; the Department of Agriculture; the Pennsylvania Farm Bureau; the Pennsylvania Environmental Council; the OCA; the OSBA; the EAPA; PECO Energy Company (PECO); Citizens' Electric Company of Lewisburg, PA, and Wellsboro Electric Company (collectively, "Citizens"); the Industrial Energy Consumers of Pennsylvania, Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Users Group, the PP&L Industrial Customer Alliance and the West Penn Power Industrial Interveners (collectively, "IECPA"); Penn Future; Native Energy, LLC (Native Energy); and, Pennsylvania Small Generator Coalition (SGC).

### DISCUSSION

The Commission has reviewed each of the comments filed in this proceeding. We will address those comments as we go through the regulations, seriatim.

#### A. § 75.21. Scope

This section endeavors to set forth the scope of the interconnection standards adopted under the Act. In the initial Staff proposal, the Scope of the regulations was described as applying to residential and small commercial customers. In the Net Metering rulemaking, several participants commented that use of the phrase "residential and small commercial customers" had the potential of excluding some agricultural customers who otherwise would be considered "customer-generators" under the Act.

We have modified the initial Staff proposal to be consistent with the scope provided in the Net Metering rulemaking. As we stated there, paraphrasing the Act is the best method of setting forth the scope of the regulations. The Act expressly provides that the net metering and interconnection regulations are to be developed for "customer-generators." That term is defined in the Act and has specific capacity limits in place. Accordingly, the scope of the regulations provides that they apply to EDCs which have customer-generators who intend to pursue net metering and interconnection opportunities in accordance with the Act.

IECPA commented that it supported the revised scope language. However, IECPA wanted to clarify that nothing in this rulemaking would serve to modify or invalidate agreements governing interconnections for systems with nameplate capacity greater than 2 MW. We agree with IECPA that this rulemaking is not intended to alter transactions involving generation systems with nameplate capacities of greater than 2 MW.

#### B. § 75.22. Definitions

In its comments, the IRRC suggested that the Commission define five technical terms that are used in making pivotal determinations during the screening process for interconnection requests. The first term, "Radial Distribution Circuit," appears four times in the proposed regulations in the following sections: § 75.34(iv), Review Procedures; § 75.37(b)(1), Level 1 Interconnection Review;

§ 75.38(b)(1), Level 2 Interconnection Review and § 75.40(d)(4), Level 4 Interconnection Review. In the proposed regulation a radial distribution circuit is presented as the segment of the EDC's system to which a small generation facility will interconnect. This term is defined in IEEE Standard 1547 (2003) as a system in which independent feeders branch out radially from a common source of supply. From the standpoint of a utility system, the area described is between the generating source or intervening substations and the customer's entrance equipment. A radial distribution system is the most common type of connection between a utility and load in which power flows in one direction, from the utility to the customer. (Presentation by Thomas Basso, IEEE Secretary, Standards Coordinating Committee 21, June 9, 2004).

We shall include this term and the following definition in the final regulation.

*Radial Distribution Circuit*—a system in which independent feeders branch out radially from a common source of supply. From the standpoint of a utility system, the area described is between the generating source or intervening substations and the customer's entrance equipment. A radial distribution system is the most common type of connection between a utility and load in which power flows in one direction, from the utility to the load.

The second term to be defined is "Draw-out Type Circuit Breaker," which appears at Section 75.36 of the proposed regulation, regarding additional general requirements. The National Electrical Safety Code (NESC) defines circuit breaker as a switching device capable of making, carrying and breaking currents under normal circuit conditions and also, making and carrying for a specified time and breaking currents under specified abnormal circuit conditions, such as those of a short circuit. A draw-out circuit breaker has two parts, the base, which is bolted and wired to the frame and the actual breaker, which slides into and electrically mates with the base. Thus, a draw-out circuit breaker can be physically removed from its enclosure thereby creating a visible break in the circuit.

Based upon the NCSC language, we shall include the following definition in the final rulemaking.

*Draw-out Type Circuit Breaker*—a switching device capable of making, carrying and breaking currents under normal circuit conditions and also, making and carrying for a specified time and breaking currents under specified abnormal circuit conditions, such as those of a short circuit. A draw-out circuit breaker has two parts, the base, which is bolted and wired to the frame and the actual breaker, which slides into and electrically mates with the base. A draw-out circuit breaker can be physically removed from its enclosure thereby creating a visible break in the circuit.

The third technical term which needs to be defined is "Secondary," which is used at Sections 75.37(b)(3) and 75.38(b)(9) regarding Level 1 and Level 2 Interconnection Reviews. The specific language within these two sections of the regulation is as follows:

When the proposed small generator facility is to be interconnected on a single-phase shared secondary line, the aggregate generation capacity on the shared secondary line . . .

The term "Secondary," refers to a service line subsequent to the utility's primary distribution line, and is also referred to as the customer's service line. For clarity we shall incorporate the definition of "Secondary," describing its intended meaning within the final rulemaking as follows.

*Secondary line*—a service line subsequent to the utility's primary distribution line, and is also referred to as the customer's service line.

The fourth technical term cited by the IRRC is "Center Tap Neutral," which is used at Sections 75.37(b)(4) and 75.38(b)(10) regarding Level 1 and Level 2 Interconnection Reviews. The following is an explanation of how and why a center tap neutral approach is applied when installing electrical service.

A center tapped transformer has a tap in the middle of the secondary winding, usually used as a grounded neutral connection. This provides an option of using the full available voltage output or just half of it according to need. This type of transformer is used to bring the distribution system voltage down from three-phase to a safer level to be used for household purposes.

We shall include the following definition in the regulation regarding a center tap neutral transformer.

*Center tapped neutral transformer*—a transformer with a tap in the middle of the secondary winding, usually used as a grounded neutral connection, intended to provide an option for the secondary side to use the full available voltage output or just half of it according to need.

The last term the IRRC requested the Commission to provide a definition for is "Anti-Islanding Function," which is used in the regulation at Sections 75.38(b)(8) and 75.40(e)(4), regarding Level 2 and Level 4 Interconnection Reviews. As described in IEEE 1547, islanding is the situation during which the customer's generator facility energizes a portion of the spot or area network (distribution system) through the point of common coupling for more than five seconds. To prevent this event, the customer's interconnection system must detect the island and cease to energize the spot or area network within two seconds of the formation of an island. Islanding may also be described as occurring when a distributed generation source continues to provide electricity to a portion of the utility grid after the utility experiences a disruption in service. Since the utility no longer controls this part of the distribution system, islanding can pose problems for utility personnel safety, power quality, equipment damage and restoration of service. (National Renewable Energy Laboratory, Study and Development of Anti-Islanding Control for Grid-Connected Inverters, May 2004). Accordingly, the anti-islanding capability acts to automatically isolate the generating unit from the distribution circuit within a specified period of time when a potential islanding situation develops.

Anti-islanding capability is built into inverter based systems certified to IEEE 1574 standards and tested in accordance with UL 1741. Acknowledging the IRRC's request, we shall include the following definition of anti-islanding in our final regulation.

*Anti-islanding*—the protective function which prevents electrical generating equipment from exporting electrical energy when connected to a de-energized electrical system.

The IRRC also noted that several definitions contain substantive provisions which cannot be enforced unless those provisions are placed in the body of the regulation. The IRRC pointed to the definitions for: "Certificate of completion," "Interconnection system impact study" and "Queue position." We will modify those definitions and ensure that substantive provisions are placed in the appropriate places in the regulations. In addition, the IRRC suggested adding a definition of "Equipment package" to this regulation. We have done so.

The IRRC also notes that at certain places in the Definitions section, we reference "the most current official published version" of technical references (IEEE standard 1547.1 and UL standard 1741) while in other places we reference the standards "as amended and supplemented." The IRRC suggests that we revise the definitions to provide for a consistent phrase regarding the updated versions of the technical standards. The EAPA also comments that the regulations should recognize that the technical standards are "living" documents that will be amended and supplemented over time. We will make the modification recommended by the IRRC which also addresses the EAPA's concerns.

#### **Proposed "Affected System" Definition**

The proposed regulations do not incorporate a definition of "Affected System." The term refers to an Electric Distribution System, other than the Electric Distribution System owned or operated by the EDC to which the customer-generator is interconnected, that may be affected by the proposed interconnection.

#### **Positions of the Parties**

The EAPA argues that there will be situations where the installation of a customer-generator may have an impact on a neighboring EDC, particularly for Level 2 and 3 installations. Of particular concern to the EAPA are interconnections with other utility systems at the distribution level such as with Rural Electric Co-ops and Municipal Utilities. The EAPA, therefore, supports inclusion of a mechanism to deal with such situations both for purposes of system study and accounting/cost allocation. The IRRC agrees that any system which may be affected by the generator, including neighboring EDCs, should be party to the consideration of the impact of that generator on their systems.

The OCA and SGC, however, do not believe that the definition proposed by the EAPA is necessary. The OCA is not aware of substantial interconnections below the sub-transmission level where impacts identified by the EAPA can be reasonably expected to occur. In addition, the OCA notes that the Commission's proposed regulations govern small generators of less than 2 MW. Larger units will be required to interconnect directly under PJM small generation interconnection rules. As a result, for those larger systems, regional impacts will be analyzed and generators will be required to comply with PJM rules.

Likewise, SGC believes that a definition for this term is functionally irrelevant under state jurisdiction in the presence of a functional Regional Transmission Organization (RTO). SGC notes that in cases where a generator interconnection may affect another utility's system, it can only do so through the transmission grid. That type of request would be processed under PJM Interconnection rules for proper impact analysis on the transmission grid.

### Disposition

The OCA and SGC have made valid arguments against the inclusion of a definition of "Affected System." The Commission therefore declines to incorporate that definition since it is highly unlikely that the impacts cited by EAPA are likely to occur with systems contemplated by this regulation. Larger units over 2 MW would be required to interconnect directly under PJM small generation interconnection rules. If an interconnection governed by this regulation does present a problem of this nature, that can be reviewed by the Commission on a case-by-case basis.

### Designated Address

The EAPA proposes a specific definition for "designated address" in addition to providing that EDCs establish a designated address for receipt of interconnection applications and materials. The IRRC also comments that a designated address should be used to provide certainty for the delivery of interconnection materials to EDCs. We will decline to adopt a definition for designated address, but we will provide the requirement that each EDC provide information regarding its designated address in interconnection materials, its tariff and on its website.

### Proposed "Electric nameplate capacity" Definition

The proposed regulation defines "Electric nameplate capacity" as the "net maximum or net instantaneous peak electric output capability measured in volt-amps of a small generator facility as designated by the manufacturer."

### Positions of the Parties

The EAPA comments that use of the word "net" is inappropriate in the definition. According to the EAPA, if "net" is contained in the definition, it is theoretically possible for a 100 MW generator with 99 MW of load to be reviewed under the Level 2 screening criteria. The EAPA comments that the effect of the generator on the EDC's system needs to be based on the rating of the generator and not on the net output capability. The EAPA suggests deletion of the word "net" from the definition. The IRRC comments that the Commission should explain why net output is the correct measure.

### Disposition

We will decline to adopt the EAPA suggestion. In doing so, we note that the EAPA's "theoretical" example is not particularly useful in the analysis of this issue. Simply put, the screens and studies provided for in this regulation are designed to ensure that the net output capability of any particular generator facility will not adversely affect the distribution circuit to which interconnection is sought. Thus, the generating output which is of concern is that output net only of the generation plant use. It is that net output capability which will impact the distribution circuit. Systems which carry output potentials of sufficient size to warrant the EAPA's concern are necessarily processed under higher level screens with greater scrutiny. This, in turn, will provide the certainty that the EAPA suggests is at the root of its concern. Conversely, adoption of the EAPA's suggestion may force lower rated systems into more complex screens without any concomitant benefit to circuit reliability.

### Proposed "Minor Equipment Modification" Definition

The proposed definition of Minor Equipment Modification provides that: "Changes to the proposed small generator facility that do not have a material impact on

safety or reliability of the electric distribution system." The purpose of the definition is to clarify that in those circumstances when a minor equipment modification is made, a new interconnection application will not be required. (See, e.g., § 75.23(f)(6)).

### Position of the Parties

The EAPA suggests adding the phrase "power quality" to the above definition (and to other portions of the regulation). The purpose of the EAPA suggestion is to ensure that "the maintenance of power quality be incorporated into several locations throughout the rulemaking."

### Disposition

We will decline to adopt the EAPA's suggestion. The issue of power quality is managed by the regulation's use of IEEE 1547 and UL Standard 1741 requirements as well as the more complex and advanced reviews required for generator facilities which are not readily certified under the less complex screens. Adoption of the EAPA's suggestion here (and at other locations in the regulation) simply adds additional, unnecessary complexity.

### C. General Issues

Initially, we note that the EAPA provided an extensive red-lined version of the proposed regulation. Most of the suggested modifications did not have accompanying comments or other justification for their implementation. Where the suggestions result in greater clarity without modifying substance or a participant's obligations, we have generally adopted them. In many cases, we have declined to modify the regulation without further comment. Where comments have been provided by the EAPA, we have addressed them. However, we emphasize that all of EAPA's suggestions have been carefully considered.

A brief description of the substantive provisions of the regulation is in order at this point. The regulation provides interconnection procedures for small generators with a nameplate capacity of up to two megawatts who wish to interconnect to an EDC's electric distribution system. The procedures divide the process into four distinct review screens, Levels 1, 2, 3, and 4, depending on the size and nature of the interconnection equipment involved.

Level 1 projects are those which: a) have a nameplate capacity of 10 kW or less; and, b) are inverter based using customer interconnection equipment that is certified.

Level 2 projects are those which: a) have a nameplate capacity rating which is 2 MW or less; b) are inverter based; c) have received certification of the customer's interconnection equipment or review of the generator facility under Level 1 was not approved.

Level 3 projects are those which: a) have a nameplate capacity of 2 MW or less; b) do not qualify for either Level 1 or Level 2 review procedures or have been reviewed under Level 1 or Level 2 process but have not been approved for interconnection.

Interconnection customers who do not qualify for Level 1 or Level 2 review and do not export power to the grid may request to be evaluated under Level 4, which is an expedited review process.

### The IRRC's General Comments

#### Screening criteria vs. alternative energy source availability

The IRRC presented several general comments which are best addressed at this time. First, the IRRC expressed concern that some of the screening criteria could serve as

barriers to the development of alternative energy. Accordingly, the IRRC suggested that the Commission explain how a necessary balance is stricken between the adopted screening criteria and allowing alternative energy sources to be reasonably available in the marketplace.

This regulation concerns itself with providing technical standards and processes by and through which customer-generators may interconnect to an EDC's distribution system. The alternative energy sources enabled by these interconnections will be a very small part of the over-all alternative energy development envisioned by the Act. In addition, it is anticipated that the technical expertise of the customer-generators covered by the regulation will vary widely. Accordingly, the screening criteria have been developed to ensure that the interconnection process is relatively quick and inexpensive, while still providing for reliability of the electric distribution system. To the extent that criteria serve to screen out a particular generator facility, the screens provide the ability for customer-generators to make necessary modifications and eventually obtain interconnection.

There should be only two instances when a generator facility fails the screens regardless of efforts at modification. The first is when a particular distribution circuit has reached its maximum capacity and is physically incapable of receiving any additional generation. The second instance is when the generator facility simply cannot match the screens' technical requirements regardless of modification. In either case, reliability demands that the interconnection fail. It is anticipated that the number of these types of failures will be few and will not significantly decrease the amount of alternative energy which would normally be produced by the types of interconnected generation contemplated by this regulation.

#### **Cost Recovery**

The IRRC suggests that the Commission address cost recovery in the context of certain regulations which provide for EDC actions. We will address the issue of cost responsibility in the context of those specific regulations. However, cost recovery by an EDC is an issue that is not readily resolved in the context of this regulation. The Act provides for the recovery of certain specific and indirect costs relating to implementation of the Act at Section 3, 73 P. S. § 1648.3. Whether costs incurred in implementing this regulation are covered under that section, or whether they are allowable as an EDC expense for recovery through rates are issues to be decided in the context of the Commission's over-all implementation of the Act or, possibly, in an individual EDC's applicable rate case.

#### **Insurance and Indemnification**

In our November NOPR, we did not mandate indemnification or liability insurance requirements having determined that the appropriate vehicle for indemnification, and insurance requirements, if any, would be the interconnection agreement form. We invited comments on the issue of requiring customer-generators to provide general liability insurance as a prerequisite for interconnection and asked the Parties to discuss how such a requirement would apply to each customer-generator class.

#### **Positions of the Parties**

The IRRC queried how interconnections with alternative energy suppliers could be done without insurance protection but went on to state that because the Commission did not provide language regarding insurance requirements, any language added to the regulation would

have to be done in another rulemaking. IRRC pointed to the §§ 75.37(a) and 75.38(a) of the proposed regulation which provide that an "EDC may not impose additional requirements . . . not specifically authorized under this subchapter."

Citizens state that customer-generators should be required to provide general liability insurance because the malfunction of a parallel generating unit of any size might negatively affect the EDC's distribution system and service to other customers. The EAPA supports an insurance requirement with policy limits commensurate with the industry norm for equipment of the size being utilized.

DEP, SGC, and the OCA support following the MADRI model which does not require customer-generators to provide general liability insurance; but, does provide a recommendation in the interconnection agreement that the customer-generator obtain liability insurance to cover any potential risk. Native Energy, the Department of Agriculture, Pa Farm Bureau, and SGC state that many rural landowners and farmers do not have the capital necessary to invest in additional forms of insurance and that such a requirement would act as an obstacle to their investment in clean energy projects. Various Parties opposing an insurance regulation point to our neighboring states, New Jersey and New York, which do not permit the EDCs to require insurance of the customer-generators.

#### **Disposition**

We have received no comments that have provided even anecdotal information regarding instances where the lack of an insurance requirement for a customer-generator has negatively affected the EDC's system or other customers. We anticipate that most customer-generators will voluntarily obtain some form of liability protection. Additionally, we note that our net metering regulations do not require insurance. We will follow the MADRI model on this issue. We expect that the standard interconnection agreement will not require customer-generators to provide proof of general liability insurance; however, it will recommend that every customer-generator protect itself with insurance due to the risk of incurring damages. We believe that this approach will permit the customer-generator to determine the appropriate amount and type of insurance that best suits their facility without creating further barriers to those wishing to interconnect. If experience with implementation suggests otherwise, we will revisit this issue in another rulemaking.

#### **Section 1648.5 of the Act; Consistency with rules in other states**

IRRC noted that the Act requires that the Commission adopt rules which are consistent with rules developed in other states located in Pennsylvania's region. The IRRC comments that several interested parties have commented that the regulation differs from certain regulations in New Jersey in several respects, with the commenting party usually favoring the New Jersey rules. The IRRC requests that the Commission explain how the final form regulation is consistent with Section 1648.5 of the Act.

The requirement of the Act is that the Commission adopt regulations that are "consistent" with rules developed in neighboring states. The Act does not require that our processes be identical. In most instances, the regulation is very close if not identical to the processes established in New Jersey. Some examples include the lack of an insurance requirement, a multi-level screening process

based upon the complexity, output and certification level of the generation facility and the effort to standardize the interconnection process across the Commonwealth. Differences include specific timelines for the individual screens, the requirement for a lock-box device to permit access to generator facilities and the limitation that non-inverter based equipment be processed under a Level 3 screen rather than a Level 2 screen.

From the foregoing, the Commission believes that the final-form regulation is "consistent" with the regulations in neighboring states, albeit not identical. It is important to note that the final-form regulation was developed, in part, using the MADRI process which included input from almost all of the neighboring state public utility commissions. In addition, not all of the neighboring states have finalized their interconnection standards while some (such as New Jersey and New York) have finalized standards which are not identical. Accordingly, we interpret the Act's requirement to adopt an approach which serves Pennsylvania while being consistent, but not necessarily identical, with neighboring states. To that end, we have adopted a multi-level screening process with specific timelines and specific technical requirements. That type of system is, in general, consistent with New Jersey and other surrounding states that have standards in place.

#### **Review Timelines**

#### **Positions of Parties**

IRRC noted that several comments argued that the timelines for review provided in the various screens were too long. As noted, Penn Future, the Pennsylvania Environmental Council, and SGC think the review process is too long. Those Parties would like to see the review periods mirror those used in the New Jersey interconnection standards. DEP proposed that the Level 1 review period should be shorter. SGC suggested that the Level 1 review should not exceed 20 business days, Level 2- 25 business days, Level 3-180 business days, and Level 4-30 business days. Citizens Electric and Wellsboro Electric noted the potential review burden on a small utility. They noted their limited financial and personnel resources available to conduct review of customer-generator applications, and proposed that the regulations provide for flexibility to accommodate small EDCs. The EAPA supported most of the proposed review timelines for Level 1 through Level 4.

Citizens, DEP, PECO and SGC offered comments about how the timelines should be handled during an EDC's emergency situation. Citizens propose that the commission adopt regulations concerning an extension of the Level 1 through Level 4 timelines in such situations. All the other commentators suggest that the Commission should consider extensions of the timelines on a case-by-case basis.

#### **Disposition**

We have analyzed the proper balance between an expedited review process and providing the EDC with adequate time to properly review a customer-generator's interconnection application without compromising safety, reliability, and creating additional personnel costs for the EDC. As part of our drafting of the timelines, we have participated in the MADRI Interconnection Working Group and reviewed interconnection guidelines of other states including New Jersey.

Based on our analysis and the comments that we have received, we believe the timelines in the regulations offer the proper balance between an expedited review process for the customer-generator and adequate time for the EDC to review the potential project for safety and reliability. A customer-generator that is proposing a project with a 15 to 20 year life will not be deterred with a review time slightly longer than the review time in another state. The payback to the customer over the fifteen to twenty years will be about the same regardless of whether the project takes a slightly longer review period to approve. A shorter review process could require the EDC hiring more staff to make certain the shorter review period is met, which will result in additional personnel costs to the ratepayer.

We hasten to add that the timelines set forth in the regulation are *maximum* timelines. Depending on the number of pending interconnections, the actual review time could be much less. We also expect that as the EDCs and equipment vendors become more experienced with the review processes, the actual time for review will be reduced. Therefore, we will maintain the review timelines from the proposed regulations.

We acknowledge that during an emergency situation an EDC may need to re-direct personnel to assist in addressing the emergency situation. However, the Commission does not believe that a regulation is required to address this issue. It is possible that an EDC could work informally with interconnection applicants to obtain extensions in emergency situations. Failing that, an affected EDC could seek a waiver of specific timelines from the Commission.

#### **Inverter/noninverter distinctions for interconnection**

IRRC commented that several sections of the regulation distinguish between inverter and non-inverter based equipment. IRRC noted that the Act contains no mention of whether an alternative energy source requires inverter based equipment or not. IRRC requested that we explain why there should be a distinction between inverter and non-inverter based equipment in the regulation.

The regulation governs the physical interconnection of generation facilities to distribution circuits. Different types of generation facilities (i.e., inverter and non-inverter based equipment) have different engineering aspects and potentially different impacts on the circuits involved. Generally speaking, inverter based equipment that has been certified requires a much less complex review process than a rotary based system that has not been certified. Accordingly, it is appropriate for the review screens to provide different approaches to the different types of equipment. Because this issue deals with physical interconnection, it is the type of equipment that is important, not necessarily the type of alternative energy source used.

#### **Advanced Notice of Final Rulemaking**

IRRC noted that several issues remain in contention at this stage of the rulemaking process. IRRC suggested that the Commission continue the stakeholder process and publish an Advanced Notice of Final Rulemaking in an effort to resolve any remaining controversy.

As we discussed above, this process began in the early spring of 2005. The issues have been discussed several times in the Pennsylvania stakeholder process and at length during the summer of 2005 during the MADRI process. Participants were given the opportunity to com-

ment on a staff initiated straw man proposal and then given an additional opportunity to comment on the November NOPR. At this point in time, the Commission understands the positions of those commenting on the issues and has received sufficient information to enable us to balance the relative interests involved and achieve the best results for Pennsylvania, consistent with the requirements of the Act. Accordingly, we believe that the additional time spent in further review will only delay implementation of the regulation without providing consensus on any of the issues which remain in controversy.

#### **D. § 75.33. Fees and Forms**

##### **Positions of the Parties**

The IRRC commented that fees and forms are not specified in this section other than the notation that the Commission will develop the fees. IRRC requested that the Commission provide detailed information on the fees and forms required in this regulation. DEP expressed the concern that failure to provide specific fees and forms in this regulation will further delay implementation of the interconnection standards and requests that any proceedings to develop fees and forms be initiated as soon as possible.

##### **Disposition**

In the November NOPR, we stated that standard forms and fees would be developed through an iterative process involving Commission tentative and final Orders. We expect to use the stakeholder approach in the development of both fees and forms to a greater extent than the November NOPR may have suggested. The nature of the Commission action which follows the stakeholder process will be determined later. As we move through that process, we will bear in mind the concerns expressed regarding improper subsidies and the need for prompt implementation. As suggested by the IRRC, the fees developed in that process will be placed in EDC tariffs. It has been the Commission's experience that fees and forms of the nature at issue here are not readily addressed in rulemakings, particularly if changes are warranted as all participants gain experience during implementation.

#### **E. § 75.34(2). Limitation of Level 2 Reviews to Inverter Based Equipment; § 75.34(4). Use of Level 4 Reviews for Interconnection to Area Networks**

Under § 75.34 (2), an EDC uses Level 2 for evaluating interconnection requests for inverter based systems that have a nameplate capacity rating of 2 MW or less, the equipment is certified, and the proposed interconnection is to a radial distribution circuit, or spot network limited to serving one customer. Section 75.34(4) provides for an expedited review process for those customers not qualifying under Level 1 or Level 2 and that do not export power beyond the point of common coupling.

##### **Positions of Parties**

Penn Future, SGC, Pennsylvania Energy Council, Farm Bureau, Pa. Department of Agriculture, DEP, Pennsylvania Environmental Council, and Native Energy support allowing non-inverter systems to be reviewed under Level 2. They note that many bio-digesters and low-impact hydro projects rely on rotating equipment and would not be eligible for the more expedited Level 2 review. Because of the greater cost of a Level 3 review, they suggest this regulation could cause a barrier to entry. They further mention that FERC Order 2006 allows Level 2 reviews of generators similar to those discussed here, but require additional information from the generator.

The EAPA and PECO support the retention of Level 2 reviews limited to inverter based systems. They note that the use of inverter technology eliminates or greatly reduces the impact the facility will have on the Area Electric Power System. However, they suggest that non-inverter based generation has the potential to deliver five to seven times the fault current an inverter based generator of equal size can deliver. This can significantly impact the ability of the distribution system's protective equipment to adequately detect a fault condition within an acceptable time period and lead to equipment damage and outage conditions.

The EAPA and PECO support the permissive use of a Level 4 review. The EAPA notes that the intent of the Level 4 review was to work with the alternative energy community to provide an accommodation while simultaneously maintaining safety and reliability. Therefore, they emphasize that it is imperative that the EDCs maintain the authority over the level of review required for interconnection to an area network. SGC supports the Level 4 review process for larger generators, but suggests all language be eliminated that does not deal with the larger non-exporting generators.

##### **Disposition**

The EAPA makes a strong argument why Level 2 reviews should apply only to inverter based generators. The potential impact on system reliability and safety must be an over-riding consideration. A non-inverter system that could potentially deliver five to seven times the fault current of an inverter system is a concern and requires the level of analysis offered in a Level 3 review.

Other comments noted that a Level 3 review will add to the cost of a bio-digester project and could cause a barrier to entry. We agree that the project cost for bio-digesters will increase under a Level 3 review. However, the incremental cost will not be so large as to inhibit entry into the market for a project that could cost \$700,000 to \$800,000. It is our expectation that the actual incremental cost for a Level 3 review could be less than 1% to 2% of the total project cost. Accordingly, we will decline to modify the Level 2 prerequisites.

In the MADRI Interconnection Working Group, the EDCs agreed to include a Level 4 review of an interconnection to an area network in limited circumstances and only at their discretion. The Level 4 review is predicated on the EDC possessing enough data to accurately assess the impact of the generator on the system. SGC supports the Level 4 review process for smaller generators. We agree that the EDC must make the determination whether enough information exists under a Level 4 review to allow them to accurately assess system reliability and safety, or whether the project should be reviewed under Level 3.

#### **F. § 75.36(2) Total Nameplate vs. Incremental Evaluation**

Section 75.36(2) of the proposed regulations provides that when an interconnection request is for an increase in capacity for an existing small generator facility, the interconnection request shall be evaluated on the basis of the new total electric nameplate capacity of the small generator facility.

##### **Position of the Parties**

PECO, Citizen's Electric and the EAPA agree with the proposed regulations as written. In order to ensure system reliability, the interconnection review must be based on the total nameplate capacity of the interconnec-



tion facility. The parties contend that the total evaluation is vital to an EDC when determining the relaying necessary to properly protect the distribution system. Further, what must be considered when reviewing an interconnection request is the aggregate generation connection to a line or line segment, not only the nameplate capacity of a single interconnection facility. Evaluating the aggregate generation is the only way to ensure that safety and quality of service of the line is not jeopardized and system reliability is maintained.

SGC, the OCA and Penn Future recommend that the level of review assigned to new interconnection applications be based on the proposed new incremental capacity. The parties contend that the aggregate impact of existing distribution generation capacity on a circuit is addressed by each Level of the screening criteria. The OCA urges the Commission to follow the model outlined in PJM Manual 14A and 14B.

#### **Disposition**

Safety and quality of service remain paramount to any cost savings that may occur in developing these standards. We simply cannot ignore design and service conditions that afford reliable service and a continuous supply of electricity. SGC commented that the Commission may be attempting to prevent sequential incremental additions to a single installation as a means of circumventing the application of a more intensive interconnection review. This is not the case. As stated by Citizens, the appropriate engineering and safety design for a facility must consider the maximum potential adverse impact of the facility on the distribution system. This will occur only if the review is based on the total nameplate capacity. The entire nameplate electric capacity should be examined at the time of application.

With regard to the use of the PJM approach, this regulation deals with interconnection at the distribution level, not the higher transmission level. The PJM Manuals address interconnection procedures for high voltage and extra high voltage transmission lines that possess a higher design and service condition for new loads. This is not the case with smaller distribution service systems that require more scrutiny when incremental load is added. Based on the comments presented on this issue, we will maintain the language presented in the proposed rulemaking and favor on the side of caution when dealing with operational issues.

#### **G. § 75.36(3). EDC Records**

IRRC suggests several modifications to this provision to provide consistency and greater clarity. We have modified § 75.36(3)(ii) to require reporting on the number of days to complete interconnection requests rather than the "times" required for completion. The IRRC suggests greater specificity in § 75.36(3)(v) which required the reporting of the number of requests that were not processed within "established timelines." The regulation provides timelines in several areas. Accordingly, we have modified the subsection to provide that reporting will be required for the number of requests which were not processed in accordance with the timelines established in this subchapter. We believe that will provide sufficient direction to the EDCs to produce the information the Commission seeks.

#### **H. § 75.36(6). Interconnection Request**

IRRC suggested modifying this provision to provide greater clarity. We agree. The modified provision will simply provide that when an interconnection request is deemed complete, any modification other than a minor

equipment modification shall require the submission of a new interconnection request, unless otherwise approved by the EDC.

#### **I. § 75.36(8) Single Point of Interconnection**

Under § 75.36(8), regarding additional general requirements, the proposed regulation states that "an EDC may propose to interconnect more than one small generator facility at a single point of interconnection." This may be done to minimize the cost of the interconnection project to the customer-generator. Additionally, if the customer-generator requests to have more than one generator facility interconnected at a single point on the EDC's system, the EDC may not unreasonably refuse the customer-generator's request. Finally, this section provides that if an EDC proposes a single point of interconnection for more than one generation facility of a single customer-generator, that customer-generator may elect to pay the entire cost of separate interconnection points.

#### **Positions of the Parties**

First, we will address the four areas of concern presented by the IRRC on this portion of the proposed regulations. The IRRC expressed concern that the first sentence of the proposed regulation is not clear and suggested that it be redrafted. Second, the IRRC questioned whether minimization of the EDC's costs would be considered or if only the customer-generator's costs were subject to such analysis. Additionally, should EDC costs to enhance system reliability and safety be part of this analysis? The IRRC's third comment suggests that the regulation provide clear guidance on what is "unreasonable" regarding refusal of a joint facility, single point interconnection. Lastly, the IRRC suggested that we reconcile the language in this section—"May not unreasonably refuse to do so," with the language at § 75.37(a)(5) which states "construction of facilities by the EDC on its own system is not required to accommodate the small generator facility."

We agree with the IRRC regarding the clarity of the first sentence of § 75.36(8), and shall redraft that language for inclusion in the final regulation. Regarding the IRRC's second comment, the EDC is required to provide to the customer-generator a description and non-binding estimated cost of facilities required to interconnect the project in a safe and reliable manner. The EDC will not be responsible for any costs incurred to install a customer-generator interconnection. All of the interconnection's associated costs will be the responsibility of the customer-generator. Additionally, since all costs of physical interconnection are the responsibility of the customer-generator, there is no reason to perform an analysis of how to minimize the EDC's costs.

The term "unreasonable" is used in this regulation to remind the EDCs that the purpose of the Act is to encourage the development of alternate sources of energy and to deny such a request without good reason would be violative of the Act. It is simply an affirmative statement of the underlying principle that all parties to an interconnection transaction are expected to act in good faith. This is very similar to the "arbitrary and capricious" standard which governs certain Commission actions. The term is not so vague as to preclude an EDC from conforming its actions to its intent. In addition, any EDC that has reservations is free to seek an opinion of counsel or petition the Commission for a Declaratory Order.

We believe the language in § 75.37(5) which states that an EDC is not required to construct facilities on its system to accommodate a small generation facility,

is not in conflict with § 75.36(8). The meaning of § 75.37(5) is that an EDC is not required, for example, to extend its distribution system or install additional line poles or transformers to accommodate the installation of a customer-generator interconnection. Even though pursuant to § 75.36(8), an EDC may not unreasonably refuse a customer-generator's request for a single point interconnection of multiple generation facilities, no cost of the interconnection will be the responsibility of the EDC.

Parties commenting on the proposed regulations had varying positions on this section. The EAPA does not oppose the concept but, points to cost recovery as a subordinate issue. The OSBA stated that the language implies that the EDC is to pay the cost if the customer-generator chooses to use a single point of interconnection for multiple generation facilities. Additionally, the OSBA asserted that to avoid subsidization, this cost should be paid by the customer-generator. As explained above, we shall clarify the language in the proposed regulation to remove any ambiguity as interpreted by the OSBA.

Penn Future and PEC stated that if the EDC requests a single point of interconnection for multiple generator facilities, then the EDC must be responsible for the costs, otherwise these costs would be a significant barrier to the customer-generator. Conversely, PECO stated that the customer-generator is the party responsible for the costs of interconnection at any point on the EDC's system. Whether or not the interconnection is located on the same point as other interconnections should not shift the cost responsibility to the EDC. We do not agree with the interpretation of Penn Future and PEC wherein the EDC would 'request' a single point of interconnection for multiple generator facilities. The proposed regulation states that an EDC may 'propose' a single point of interconnection. Additionally, regardless of the fashion in which the EDC communicates to the customer-generator the benefits of, or the engineering constraints involved in, utilizing a single point of interconnection, the customer-generator remains responsible for the costs associated with the project.

Finally, SGC believes the costs should be shared proportionally among the customer-generators interconnected at any single point, pursuant to PJM's model. The SGC comment has merit and should be considered when and if two customer-generators facilities may be interconnected to an EDC's system at the same point, thereby providing a cost savings to each customer-generator. However, we believe that matter is more appropriately resolved in the interconnection agreements rather than through regulation.

**Disposition**

Based upon the foregoing comments provided by the IRRC as well as the Parties as described above, we shall redraft the language for this section, as follows:

**(8) To minimize the costs to customer-generators, An an EDC may propose to interconnect more than one small generator facility at a single point of interconnection. to minimize costs to the customer-generator, and When a customer-generator requests a single point of interconnection for multiple generation facilities, the EDC may not unreasonably refuse a request to do so. When an EDC proposes a single interconnection point for multiple generation facilities of a customer-generator, and the customer-generator elects not to accept the EDC's proposal, An the interconnection customer**

**generator may elect to shall pay the entire cost of a separate point of interconnection facilities for each generation facility.**

**J. § 75.36(9) and (10) Additional General Requirements (Lockbox)**

Section 75.36 (9) and Section 75.36 (10) address the need to isolate the small generator facility from the distribution system by means of an isolation device accessible by the EDC. The device is necessary to ensure system reliability and safety, and the safety of EDC lineworkers. In lieu of an external disconnect switch, the Commission finds that a balanced and measured approach is the allowance of a readily accessible lock box.

**Positions of Parties**

The various commentors disagreed about the need for a disconnect device and the cost for such a device. Penn Future and SGC strongly oppose the requirement for an external disconnect switch or a lockbox to allow access to the disconnect switch by way of a lockbox. They note that an external disconnect switch can be costly and unnecessary when the inverter meets the IEEE 1547 standard for disconnecting from the grid. They encourage the Commission to adopt regulations similar to New Jersey that do not require either a disconnect switch or a lock box.

The OCA, DEP, and EAPA agree that an accessible lock box is a reasonable compromise that mitigates the safety concern and also limits the cost. DEP questions the need to require an isolation devise on a small generator project, but believes that the external lockbox offers an acceptable compromise. The OCA strongly supports the lockbox approach. They endorse an approach that ensures that consumers, utility employees and others are not endangered by unanticipated power flows into the distribution network, and feel the lockbox concept offers the proper balance between safety and cost. The OCA appears to support the position of allowing the EDC to install the lockbox. The EAPA also agrees that the lockbox proposal offers a reasonable alternative to mandating an accessible disconnect device. They suggest that the lockbox alternative was proposed to benefit the customer-generator and the lockbox and installation should be paid by the customer. They also propose that the customer-generator should be responsible for the acquisition and installation of the lockbox.

**Disposition**

We agree with Penn Future and SGC that a certified inverter system that meets IEEE 1547 standards offers only a small chance of a safety problem to workers, customers, or other customers, but we agree also with OCA, DEP, and EAPA that the access to a disconnect switch with the lockbox system offers a low-cost solution and provides an extra level of safety. We will maintain the provision that a customer who does not wish to provide an accessible external disconnect switch, must provide access to a disconnect switch through the lockbox system. We believe a lockbox alternative benefits both the customer-generator and the EDC, therefore, we are requiring the EDC to provide lockboxes to the customer-generator at a price to cover the EDC's cost of the lockbox. The customer-generator will be responsible for paying the cost of the lockbox and is responsible for the installation of the lockbox.

**K. §§ 75.37(b)(2), 75.38(b)(2), 75.40(c)(1)(iv) and 75.40(c)(5)(iv) Interconnection to Spot and Area Networks**

In the November NOPR, we addressed the issue of an acceptable limitation on the amount of the aggregate capacity which would be permitted to interconnect to the load side of spot networks and area networks. For each type of network, we expressed the maximum limit as 5% of the network's maximum load. We requested detailed technical information from any party which desired a modification to that limitation.

**Positions of the Parties**

The EAPA states that for spot networks, the addition of a 50kW cap to the 5% of maximum load is "important from a safety and reliability perspective." The EAPA was more specific when it addressed area networks. It commented that a 50kW cap was even more important in those instances because the load on those networks is usually much greater than spot networks. Accordingly, a 5% limitation would provide for much greater capacity additions and provide for greater risks that network protectors would operate incorrectly.

The Pennsylvania Environmental Council questions the need for a 50kW cap in addition to the 5% percentage cap. The SCG also questions the addition of a 50kW cap. The SCG notes that for spot networks, the number of customers is very small so that interconnection standards for these networks can be somewhat relaxed provided the proper studies are done. The SCG observes that both Colorado and New Jersey permit interconnections to networks and that Colorado provides for a 300kW cap, not a 50kW cap. For area networks, New Jersey permits inverter-based generators up to the smaller of 10% of the network minimum load or 500kW. Non-inverter based interconnections are permitted provided there is appropriate assurance that no power will leave the generation site. Penn Future also questions the need for a 50kW cap in addition to the 5% limitation in spot and area network interconnections. Penn Future advises that it is aware of no reason why a 50kW cap would be required for safety or reliability.

**Disposition**

We will decline to adopt the EAPA's requested modification. In doing so, we note that the interconnection to spot networks are processed under Level 1 and Level 2 reviews which provide for interconnection of certified inverter-based equipment that is equipped with redundant protective devices which presents extremely low risk factors. Interconnection to area networks is processed under a Level 4 review. An EDC will conduct an area network impact study to determine if any adverse impacts will result from the interconnection. Depending on the results of that study, the EDC may refuse the interconnection even if the generation facility is within the 5% cap. Based upon the foregoing, including the comments regarding the New Jersey and Colorado approaches, we will retain the 5% cap without an additional 50kW cap for spot and area network interconnections.

**L. § 75.37(c). Level 1 Review**

IRRC suggested a minor modification to paragraph (4) to provide that an EDC shall approve the interconnection request rather than sign it so as to be consistent with paragraph (5). We will adopt this suggestion.

**M. § 75.38(b)(4) Level 2 Interconnection Review— Fault Current Limits**

The Level 2 screen provides that the proposed small generator facility, in aggregate with other generation on the distribution circuit, may not cause any distribution protective devices and equipment, or other customer equipment on the electric distribution system to be exposed to fault currents exceeding 85% of the short circuit interrupting capability, nor may an interconnection request be made on a circuit that already exceeds 85% of the short circuit interrupting capability.

**Positions of Parties**

The EAPA maintains that the 80% fault current limitation should be adopted. They note that they do not have a record of the ratings of customer owned equipment which require a more conservative fault current limitation. Penn Future, the Pa. Environmental Council, and SGC argue for at least a 90% level. They note that FERC Order 2006 calls for an 87.5% level, and the MADRI model adopted a 90% level. The Pa. Environmental Council felt that that 85% fault current level standard could cause de-facto barriers to entry for customer-generators.

Penn Future and SGC asked the Commission to conduct additional research on such items as the percent of distribution circuits that would be disqualified under the 85% limit and the number of circuits that are being affected. SGC suggests that customer-generators are being held to a higher margin of safety than normal utility practice.

**Disposition**

The Commission has examined this issue in more detail. We have requested additional information from the EDCs on the limits of their circuits. In response to the suggestion that the Commission should adopt either the FERC Order 2006 87.5% or the MADRI 90% level, we researched the derivation for these levels and found each number was adopted without specific technical analysis to support the level. The FERC Order 2006 adopted 87.5% as an average between the 90% level proposed by the solar lobby and others, and the 80% to 85% proposed by the EDCs. The MADRI level of 90% was never agreed to by the EDCs and some other participants to the MADRI process, but was adopted by the moderator of the MADRI working group with the support of the solar lobby and some others.

SGC states in their comments, "There appears to be no technical basis for the new lower level," referring to our adoption of the 85% fault current level. This statement is completely inaccurate. We asked for technical and quantitative analysis of this issue and received only one quantitative analysis. PPL offered a reasoned technical analysis of why a level of 80% to 85% was appropriate. SGC's only response to PPL's analysis was, "... this analysis is misinforming." Neither SGC nor anyone else offered a written, technical critique of PPL's conclusion. Those parties supporting the 90% level offer no analysis and assert only that we should adopt a compromise that was reached in the FERC Order 2006, a number was unilaterally adopted by MADRI, or the limitation that was adopted in the New Jersey interconnection regulations.

The best information that the Commission has received to date strongly supports the position that an 85% limit will not impact the vast majority of circuits. Accordingly, the 85% limit will not serve as a *de facto* barrier as suggested by the SGC. Conversely, the 85% limit will

provide protection that avoids potential fault current problems. Based on the quantitative analysis that we reviewed and the additional research conducted by the Commission, we will retain the 85% fault current level.

**N. §§ 75.38 and 75.39. Level 2 and Level 3 Requests for Extension**

The IRRC notes that both Level 2 and Level 3 reviews provide that a customer-generator may request an extension of time to sign an interconnection agreement and that the request may not be “unreasonably denied” by the EDC. The IRRC expresses its concern that the provisions do not provide any criteria for an EDC to use to establish the reasonableness of its actions.

The phrase that an EDC will not act to unreasonably deny a request for extension simply affirmatively states the proposition which runs throughout the standards that all participants will act in good faith. While the provisions at issue do not provide precise criteria, we do not believe that the phrase is so vague as to preclude an EDC from determining its meaning and acting accordingly. The provisions are very similar to the arbitrary and capricious standard that the Commission must follow. If an EDC has reservations, it can seek clarification through a request for opinion or a petition for declaratory order. It is anticipated that at worst, there will very rarely be any controversy over these provisions and, at best, no controversy at all. Accordingly, we will not modify the provisions.

**O. § 75.40 Level 4 Interconnection Review**

A small generator facility that does not qualify for a Level 1 or Level 2 review may request to be evaluated under Level 4 procedures. Evaluation under Level 4 may also pertain to interconnection requests where there is no desire for export capability to the EDC’s distribution system. In addition, a Level 4 review may be used for interconnection on the load side of an area network for facilities with a nameplate capacity up to 10 kW, utilizing certified inverter-based equipment, with customer-generator installed reverse power relays and where the aggregated other generation on the area network does not exceed 5% of that network’s maximum load.

**Positions of the Parties**

As part of comments filed in response to the Initial Staff Proposal of August 25, 2005, the SGC suggested eliminating the Level 4 review and addressing those applications under Level 2 reviews for non-exporting generators. The EAPA also commented that Level 4 reviews should be permissive rather than mandatory as provided in the Staff proposal. The EAPA commented that the permissive use of a Level 4 review was agreed to by the majority of the MADRI working group to allow the EDC the flexibility to permit an expedited interconnection review for an area network while preserving its ability to perform more detailed reviews when necessary. The Commission requested additional comments on these positions to clarify the technical aspects. It was noted that specific technical support for a stated position is crucial to the Commission’s determination in these areas.

In response to the Commission’s request, two parties, SGC and PECO, provided additional comments on this issue. SGC believes that the Level 4 review for larger generators that do not export power to the grid is a step in the right direction. However, SGC requests that the Commission remove all language from Level 4 procedures that do not deal with the larger non-exporting generators since it is confusing. PECO notes that Level 4 review must be permissive but not mandatory in nature.

**Disposition**

In their comments, the SGC, EAPA and PECO offer general statements concerning Level 4 review without providing technical support for their positions as requested by the Commission. There is no analysis showing the adverse impacts created by retaining Level 4 review as provided in the proposed regulations. Absent such an analysis, the Commission declines to remove or alter the Level 4 language.

**P. § 75.40. Level 4 Interconnection Review**

IRRC commented that § 75.40(c)(7)(i) provides for “25 days” for the conduct of an impact study. Other provisions specify time frames in “business days.” IRRC recommended that this provision be modified to be consistent with other timeframes. We will clarify this provision and provide for 25 calendar days.

**CONCLUSION**

The modifications discussed herein address the concerns of the Parties and are in the public interest. We have reviewed all of the comments and, to the extent a Party’s position was not adopted, it was nonetheless carefully considered. We wish to compliment all those who filed comments. They were helpful in arriving at a final rulemaking that is consistent with the Act, the Code and fulfills the Act’s intent to remove barriers to interconnection and provide appropriate treatment to customer-generators who wish to interconnect to the distribution system.

Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. § 501; section 5 of the Alternative Energy Portfolio Supply Act of 2004 (73 P. S. § 1648.5); sections 201 and 202 of the act of July 31, 1968 (P. L. 769 No. 240) (45 P. S. §§ 1201and 1202), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. 732.204(b)); section 5 of the Regulatory Review Act (71 P. S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P. S. § 232), and the regulations promulgated thereunder at 4 Pa. Code §§ 7.23—7.234, the Commission adopts the regulations at 52 Pa. Code §§ 75.21—75.51, as noted above and as set forth in Annex A, attached hereto; *Therefore,*

*It Is Ordered that:*

1. The regulations of Commission, 52 Pa. Code, are amended by adding §§ 75.21, 75.31—75.35 and 75.51 to read as set forth at 36 Pa.B. 942; and by adding §§ 75.22 and 75.36—75.40 to read as set forth in Annex A.
2. The Secretary shall submit this order, 36 Pa.B. 942 and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by IRRC.
3. The Secretary shall submit this order, 36 Pa.B. 942 and Annex A to the Office of Attorney General for approval as to legality.
4. The Secretary shall submit this order, 36 Pa.B. 942 and Annex A to the Governor’s Budget Office for review of fiscal impact.
5. The Secretary shall duly certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
6. A copy of this order, 36 Pa.B. 942 and Annex A be served upon the Department of Environmental Protection, all jurisdictional electric utility companies, licensed electric generation suppliers, the Office of Consumer Advocate,

the Office of Small Business Advocate and all Parties filing comments in this proceeding.

7. These regulations shall become effective upon publication in the *Pennsylvania Bulletin*.

8. The contact persons for this rulemaking are Greg Shawley, Bureau of Conservation, Economics and Energy Planning, 717-787-5369 (technical), and H. Kirk House, Office of Special Assistants, 717-772-8495 (legal).

JAMES J. MCNULTY,  
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 7082 (November 18, 2006).)

**Fiscal Note:** Fiscal note 57-245 remains valid for the final adoption of the subject regulations.

Public Meeting held  
September 15, 2006

*Commissioners Present:* Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane; Kim Pizzigrilli; Terrance J. Fitzpatrick

*Final Rulemaking Re Interconnection Standards for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P. S. § 1648.5; L-00050175*

*Implementation of the Alternative Energy Portfolio Standards Act of 2004: Interconnection Standards; M-00051865*

### Final Rulemaking Order—Reconsideration

*By the Commission:*

On August 22, 2006, we entered our Final Rulemaking Order at these dockets regarding Interconnection Standards in accordance with the Alternative Energy Portfolio Standards Act of 2004, 73 P. S. §§ 1648.1—1648.8 (Final Rulemaking Order). Upon further review of the Final Rulemaking Order, and the Annex A attached thereto, it appears that several corrections to Annex A are required to conform the regulations to the text of the Order and the intent of the Regulation.

Four corrections will be made. First, Section 75.22, relating to definitions, contains a definition for *Interconnection Agreement* and a definition for *Standard Small Generator Interconnection Agreement*. The definition for *Interconnection Agreement* is a fairly basic definition and does not reference any of the review screens. The definition for *Standard Small Generator Interconnection Agreement* specifically states that it applies to the review screens for Levels 2, 3 and 4. However, Section 75.37 fails to indicate any requirement for an Interconnection Agreement for Level 1 applications. We will correct the Regulation by deleting the definition for *Interconnection Agreement*, revise the definition for *Standard Small Generator Interconnection Agreement* to apply to all screens and expressly provide for an Interconnection Agreement for Level 1 applications by adding § 75.37(c)(4)(iv).

The second correction involves the installation of the lock box provided for in § 75.36(10). The Final Rulemaking Order provides that the customer-generator is responsible for installation of the lock box provided by the Electric Distribution Company (EDC). (Final Rulemaking Order at 35). Section 75.36(10) of the Regulation provides that the EDC will both provide and install the lock box. The intent of the Regulation is consistent with the text in the Final Rulemaking Order, accordingly, § 75.36(10) will

be modified to provide that the customer-generator will install the lock box provided by the EDC.

The third correction relates to § 75.38(b)(1). That Section provides that the aggregated generation on a radial distribution circuit may not exceed 15% of “the line section annual peak load *as most recently measured at the sub station.*” (Emphasis supplied). Because of the definition of “line section” in § 75.22, measurement of load for purposes of this section will rarely, if ever, take place at a sub station. Accordingly, we will modify § 75.38(b)(1) to delete the phrase “as most recently measured at the sub station.” By deleting this phrase, the modified Section will retain the upper limit of aggregated generation and measurement of load will take place on the line section involved in the interconnection.

The fourth modification involves § 75.39 (a)(1) of the Regulation. The current section provides that the Level 3 screen applies to small generator facilities that have an electric nameplate capacity “that is less than 2 MW.” The entire Regulation is designed to apply to interconnections for customer-generators as defined by the Alternative Energy Portfolio Standards Act. That nameplate capacity limit is 2 MW or less. We will modify § 75.39(a)(1) of the Regulation to be consistent with the statutory capacity limit.

### CONCLUSION

Pursuant to Section 703(g) of the Public Utility Code, 66 Pa.C.S. § 703(g), we have reconsidered our Final Rulemaking Order entered August 22, 2006, at these Dockets and determined that the modifications discussed herein are in the public interest.

Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. § 501; section 5 of the Alternative Energy Portfolio Supply Act of 2004 (73 P. S. § 1648.5); sections 201 and 202 of the act of July 31, 1968 (P. L. 769 No. 240) (45 P. S. §§ 1201 and 1202), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section 5 of the Regulatory Review Act (71 P. S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P. S. § 232) and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234, the Commission adopts the regulations at 52 Pa. Code §§ 75.21—75.51, as noted in our Final Rulemaking Order entered August 22, 2006, as modified herein and as set forth in Annex A, attached hereto; *Therefore,*

*It Is Ordered that:*

1. The order entered August 22, 2006, at this docket is modified consistent with this order and as set forth in Annex A.

2. A copy of this order, 36 Pa.B. 942 and Annex A be served upon the Department of Environmental Protection, all jurisdictional electric utility companies, licensed electric generation suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate and all Parties filing comments in this proceeding.

3. The contact persons for this rulemaking are Greg Shawley, Bureau of Conservation, Economics and Energy Planning, (717) 787-5369 (technical), and H. Kirk House, Office of Special Assistants, (717) 772-8495 (legal).

JAMES J. MCNULTY,  
Secretary

## Annex A

## TITLE 52. PUBLIC UTILITIES

## PART I. PUBLIC UTILITY COMMISSION

## Subpart C. FIXED SERVICE UTILITIES

CHAPTER 75. ALTERNATIVE ENERGY  
PORTFOLIO STANDARDS

## Subchapter C. INTERCONNECTION STANDARDS

## GENERAL

## § 75.22. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

*Adverse system impact*—A negative effect, due to technical or operational limits on conductors or equipment being exceeded, that compromises the safety and reliability of the electric distribution system.

*Anti-islanding*—The protective function which prevents electrical generating equipment from exporting electrical energy when connected to a de-energized electrical system.

*Applicant*—A person who has submitted an interconnection request to interconnect a small generator facility to an EDC's electric distribution system, also referred to as the interconnection customer.

*Area network*—

(i) A type of electric distribution system served by multiple transformers interconnected in an electrical network circuit, which is generally used in large metropolitan areas that are densely populated.

(ii) The term has the same meaning as the term "distribution secondary grid network" as stated in IEEE Standard 1547 Section 4.1.4 (published July 2003), as amended and supplemented.

*Center tapped neutral transformer*—A transformer with a tap in the middle of the secondary winding, usually used as a grounded neutral connection, intended to provide an option for the secondary side to use the full available voltage output or just half of it according to need.

*Certificate of completion*—A certificate in a form approved by the Commission containing information about the interconnection equipment to be used, its installation and local inspections.

*Certified*—A designation that the interconnection equipment to be used by a customer-generator complies with the following standards, as applicable:

(i) IEEE Standard 1547, "Standard for Interconnecting Distributed Resources with Electric Power Systems," as amended and supplemented.

(ii) UL Standard 1741, "Inverters, Converters and Controllers for use in Independent Power Systems" (January 2001), as amended and supplemented.

*Distribution upgrade*—A required addition or modification to the EDC's electric distribution system at or beyond the point of interconnection. Distribution upgrades do not include interconnection facilities.

*Draw-out type circuit breaker*—A switching device capable of making, carrying and breaking currents under normal circuit conditions and also, making and carrying for a specified time and breaking currents under specified abnormal circuit conditions, such as those of a short

circuit. A draw-out circuit breaker has two parts, the base, which is bolted and wired to the frame and the actual breaker, which slides into and electrically mates with the base. A draw-out circuit breaker can be physically removed from its enclosure creating a visible break in the circuit.

*Electric distribution system*—

(i) The facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries from interchanges with higher voltage transmission networks that transport bulk power over longer distances. The voltage levels at which electric distribution systems operate differ among areas but generally carry less than 69 kilovolts of electricity.

(ii) Electric distribution system has the same meaning as the term Area EPS, as defined in 3.1.6.1 of IEEE Standard 1547.

*Electric nameplate capacity*—The net maximum or net instantaneous peak electric output capability measured in volt-amps of a small generator facility as designated by the manufacturer.

*Equipment package*—A group of components connecting an electric generator with an electric delivery system, and includes all interface equipment including switchgear, inverters or other interface devices. An equipment package may include an integrated generator or electric source.

*Fault current*—The electrical current that flows through a circuit during an electrical fault condition. A fault condition occurs when one or more electrical conductors contact ground or each other. Types of faults include phase to ground, double-phase to ground, three-phase to ground, phase-to-phase, and three-phase. Often, a fault current is several times larger in magnitude than the current that normally flows through a circuit.

*IEEE standard 1547*—The Institute of Electrical and Electronics Engineers, Inc. (IEEE) Standard 1547 (2003) "Standard for Interconnecting Distributed Resources with Electric Power Systems," as amended and supplemented, at the time the interconnection request is submitted.

*IEEE standard 1547.1*—The IEEE Standard 1547.1 (2005) "Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems," as amended and supplemented, at the time the interconnection request is submitted.

*Interconnection customer*—An entity that proposes to interconnect a small generator facility to an electric distribution system.

*Interconnection equipment*—A group of components or integrated system connecting an electric generator with an electric distribution system that includes all interface equipment including switchgear, protective devices, inverters or other interface devices. Interconnection equipment may be installed as part of an integrated equipment package that includes a generator or other electric source.

*Interconnection facilities*—Facilities and equipment required by the EDC to interconnect the small generator facility and the interconnection customer's interconnection equipment. Collectively, interconnection facilities include the facilities and equipment between the small generator facility and the point of common coupling, including any modification, additions that are necessary to physically and electrically interconnect the small generator facility to the EDC's electric distribution system.

Interconnection facilities are sole use facilities and do not include electric distribution system upgrades.

*Interconnection facilities study*—A study conducted by the EDC or a third party consultant for the interconnection customer to determine a list of facilities (including EDC's interconnection facilities and required distribution upgrades to the electric distribution system as identified in the interconnection system impact study), the cost of those facilities, and the time required to interconnect the small generator facility with the EDC's electric distribution system.

*Interconnection facilities study agreement*—An agreement in a form approved by the Commission which details the terms and conditions under which an EDC will conduct an interconnection facilities study.

*Interconnection feasibility study*—A preliminary evaluation of the system impact and cost of interconnecting the small generator facility to the EDC's electric distribution system.

*Interconnection feasibility study agreement*—An agreement in a form approved by the Commission which details the terms and conditions under which an EDC will conduct an interconnection feasibility study.

*Interconnection request*—An interconnection customer's request, in a form approved by the Commission, requesting the interconnection of a new small generator facility, or to increase the capacity or operating characteristics of an existing small generator facility that is interconnected with the EDC's electric distribution system.

*Interconnection study*—Any of the following studies:

- (i) The Interconnection Feasibility Study.
- (ii) The Interconnection System Impact Study.
- (iii) The Interconnection Facilities Study.

*Interconnection system impact study*—An engineering study that evaluates the impact of the proposed interconnection on the safety and reliability of an EDC's electric distribution system.

*Interconnection system impact study agreement*—An agreement in a form approved by the Commission which details the terms and conditions under which an EDC will conduct an interconnection system impact study.

*Line section*—That portion of an EDC's distribution system connected to an interconnection customer, bounded by automatic sectionalizing devices or the end of the distribution line.

*Minor equipment modification*—Changes to the proposed small generator facility that do not have a material impact on safety or reliability of the electric distribution system.

*NRTL*—*Nationally recognized testing laboratory*—A qualified private organization that meets the requirements of the Occupational Safety and Health Administration's (OSHA) regulations. NRTLs perform independent safety testing and product certification. Each NRTL must meet the requirements as set forth by OSHA in the NRTL program.

*Parallel operation-parallel*—The state of operation which occurs when a small generator facility is connected electrically to the electric distribution system and the potential exists for electricity to flow from the small generator facility to the electric distribution system.

*Point of common coupling*—The point where the customer's interconnection equipment connects to the electric distribution system at which harmonic limits or other operational characteristics (IEEE Standard 1547 requirements) are applied.

*Point of interconnection*—The point where the interconnection equipment connects to the EDC's electric distribution system.

*Queue position*—The order of a valid interconnection request, relative to all other pending valid interconnection requests, that is established based upon the date and time of receipt of the valid interconnection request by the EDC.

*Radial distribution circuit*—A system in which independent feeders branch out radially from a common source of supply. From the standpoint of a utility system, the area described is between the generating source or intervening substations and the customer's entrance equipment. A radial distribution system is the most common type of connection between a utility and load in which power flows in one direction, from the utility to the load.

*SGIA*—*Standard small generator interconnection agreement*—A set of standard forms of interconnection agreements approved by the Commission which is applicable to interconnection requests pertaining to a small generating facilities.

*Scoping meeting*—A meeting between representatives of the interconnection customer and EDC conducted for the purpose of discussing alternative interconnection options, exchanging information including any electric distribution system data and earlier study evaluations that would be reasonably expected to impact interconnection options, analyzing information, and determining the potential feasible points of interconnection.

*Secondary line*—A service line subsequent to the utility's primary distribution line, also referred to as the customer's service line.

*Small generator facility*—The equipment used by an interconnection customer to generate, or store electricity that operates in parallel with the electric distribution system. A small generator facility typically includes an electric generator, prime mover, and the interconnection equipment required to safely interconnect with the electric distribution system.

*Spot network*—The term has the same meaning as the term "spot network" under IEEE Standard 1547 Section 4.1.4, (published July 2003), as amended and supplemented. As of August, 2005, IEEE Standard 1547 defined "Spot Network" as "a type of electric distribution system that uses two or more inter-tied transformers to supply an electrical network circuit." A spot network is generally used to supply power to a single customer or a small group of customers.

*UL Standard 174*—Underwriters Laboratories' standard titled "Inverters Converters, and Controllers for Use in Independent Power Systems," as amended and supplemented.

*Witness test*—The EDC's interconnection installation evaluation required by IEEE Standard 1547 Section 5.3 and the EDC's witnessing of the commissioning test required by IEEE Standard 1547 Section 5.4. For interconnection equipment that has not been certified, the witness test shall also include the witnessing by the EDC of the onsite design tests as required by IEEE Standard

1547 Section 5.1 and witnessing by the EDC of production tests required by IEEE Standard 1547 Section 5.2. Tests witnessed by the EDC are to be performed in accordance with IEEE Standard 1547.1

### INTERCONNECTION PROVISIONS

#### § 75.36. Additional general requirements.

Additional general requirements include:

(1) When an interconnection request is for a small generator facility that includes multiple energy production devices at a site for which the interconnection customer seeks a single point of interconnection, the interconnection request shall be evaluated on the basis of the aggregate electric nameplate capacity of multiple devices.

(2) When an interconnection request is for an increase in capacity for an existing small generator facility, the interconnection request shall be evaluated on the basis of the new total electric nameplate capacity of the small generator facility.

(3) An EDC shall maintain records of:

- (i) The total interconnection requests received.
- (ii) The number of days required to complete interconnection request approvals and disapprovals.
- (iii) The number of interconnection requests denied or moved to another review level.
- (iv) The justifications for the actions taken on the interconnection requests.
- (v) The number of requests that were not processed within the timelines established in this subchapter.

(4) An EDC shall provide a report to the Commission containing the information required in paragraph (3) within 30 calendar days of the close of each annualized period. The EDC shall keep the records on file for a minimum of 3 years.

(5) Each EDC shall establish the specific mailing address and email address to which interconnection requests and questions shall be sent. These designated addresses shall be placed in the EDC's tariff and on its website. An EDC shall designate a contact person from whom information on the interconnection request and the EDC's electric distribution system can be obtained through informal requests regarding a proposed project. The information must include studies and other materials useful to an understanding of the feasibility of interconnecting a small generator facility at a particular point on the EDC's electric distribution system, except to the extent providing the materials would violate security requirements or confidentiality agreements, or be contrary to law or State or Federal regulations. In appropriate circumstances, the EDC may require confidentiality prior to release of this information.

(6) When an interconnection request is deemed complete, a modification other than a minor equipment modification that is not agreed to in writing by the EDC, shall require submission of a new interconnection request.

(7) When an interconnection customer is not currently a customer of the EDC, upon request from the EDC, the interconnection customer shall provide proof of site control evidenced by a property tax bill, deed, lease agreement or other legally binding contract.

(8) To minimize the costs to customer-generators, an EDC may propose to interconnect more than one small generator facility at a single point of interconnection when a customer-generator requests a single point of interconnection for multiple generation facilities, the EDC may not unreasonably refuse a request to do so. When an EDC proposes a single interconnection point for multiple generation facilities of a customer-generator, and the customer-generator elects not to accept and the EDC's proposal, the customer-generator shall pay the entire cost of a separate point of interconnection for each generation facility.

(9) Small generator facilities shall be capable of being isolated from the EDC by means of a lockable, visible-break isolation device accessible by the EDC. The isolation device shall be installed, owned and maintained by the owner of the small generation facility and located between the small generation facility and the point of interconnection. A draw-out type circuit breaker with a provision for padlocking at the draw-out position can be considered an isolation device for purposes of this requirement.

(10) An interconnection customer may elect to provide the EDC access to an isolation device that is contained in a building or area that may be unoccupied and locked or not otherwise readily accessible to the EDC, by installing a lockbox provided by the EDC that shall provide ready access to the isolation device. The interconnection customer shall install the lockbox in a location that is readily accessible by the EDC and the interconnection customer shall permit the EDC to affix a placard in a location of its choosing that provides clear instructions to EDC operating personnel on access to the isolation device.

#### § 75.37. Level 1 interconnection review.

(a) An EDC shall use the Level 1 interconnection review procedure for an interconnection request that meets the criteria in § 75.34(1) (relating to review procedures). An EDC may not impose additional requirements for Level 1 reviews not specifically authorized under this subchapter.

(b) The Level 1 screening criteria must consist of:

(1) For interconnection of a proposed small generator facility to a radial distribution circuit, the aggregated generation on the circuit, including the proposed small generator facility, may not exceed 15% of the line section annual peak load as most recently measured at the sub station.

(2) For interconnection of a proposed small generator facility to the load side of spot network protectors, the proposed small generator facility shall utilize an inverter-based equipment package. The customer interconnection equipment proposed for the small generator facility must be certified, and when aggregated with other generation, may not exceed 5% of the spot network's maximum load.

(3) When a proposed small generator facility is to be interconnected on a single-phase shared secondary line, the aggregate generation capacity on the shared secondary line, including the proposed small generator facility, may not exceed 20 KW.

(4) When a proposed small generator facility is single-phase and is to be interconnected on a center tap neutral of a 240 volt service, its addition may not create an imbalance between the two sides of the 240 volt service of more than 20% of the nameplate rating of the service transformer.



(5) Construction of facilities by the EDC on its own system is not required to accommodate the small generator facility.

(c) The Level 1 interconnection review procedure must consist of:

(1) An EDC shall, within 10 business days after receipt of the interconnection request, inform the applicant that the interconnection request is complete or incomplete and what materials are missing.

(2) The EDC shall, within 15 business days after the end of the 10 business days noted in paragraph (1), verify that the small generator facility equipment can be interconnected safely and reliably using Level 1 screens. When an EDC does not have a record of receipt of the interconnection request, and the applicant can demonstrate that the original interconnection request was delivered, the EDC shall expedite its review to complete the evaluation of the interconnection request within 15 days of the applicant's resubmittal.

(3) Upon notice, within 10 business days after receipt of the certificate of completion, an EDC may conduct a witness test at a mutually convenient time. If the EDC does not conduct the witness test within 10 business days or within the time otherwise mutually agreed to by the parties, the witness test is deemed waived.

(4) Unless an EDC determines and demonstrates that a small generator facility cannot be interconnected safely and reliably, the EDC shall approve the interconnection request form subject to the following conditions:

(i) The small generator facility has been approved by local or municipal electric code officials with jurisdiction over the interconnection.

(ii) A certificate of completion has been returned to the EDC. Completion of local inspections may be designated on inspection forms used by local inspecting authorities.

(iii) The witness test has been successfully completed or waived.

(iv) The interconnection customer has signed a standard small generator interconnection agreement. When an interconnection customer does not sign the agreement within 30 business days after receipt from the EDC, the interconnection request will be deemed withdrawn unless the interconnection customer requests to have the deadline extended. The request for extension may not be unreasonably denied by the EDC.

(5) When a small generator facility is not approved under a Level 1 review, the interconnection customer may submit a new interconnection request for consideration under Level 2, Level 3 or Level 4 procedures specified in this chapter without sacrificing the applicant's original queue position.

**§ 75.38. Level 2 interconnection review.**

(a) An EDC shall use the Level 2 interconnection review procedure for an interconnection request that meets the criteria in § 75.34(2) (relating to review procedures). An EDC may not impose additional requirements for Level 2 reviews not specifically authorized under this subchapter.

(b) The Level 2 screening criteria must consist of:

(1) For interconnection of a proposed small generator facility to a radial distribution circuit, the aggregated generation on the circuit, including the proposed small generator facility, may not exceed 15% of the line section annual peak load.

(2) For interconnection of a proposed small generator facility to the load side of spot network protectors, the proposed small generator facility shall utilize an inverter-based equipment package. The customer interconnection equipment proposed for the small generator facility must be certified and, when aggregated with other generation, may not exceed 5% of a spot network's maximum load.

(3) The proposed small generator facility, in aggregation with other generation on the distribution circuit, may not contribute more than 10 % to the distribution circuit's maximum fault current at the point on the primary voltage distribution line nearest the point of common coupling.

(4) The proposed small generator facility, in aggregate with other generation on the distribution circuit, may not cause any distribution protective devices and equipment (including substation breakers, fuse cutouts, and line reclosers), or other customer equipment on the electric distribution system to be exposed to fault currents exceeding 85% of the short circuit interrupting capability. The interconnection request may not request interconnection on a circuit that already exceeds 85% of the short circuit interrupting capability.

(5) The proposed small generator facility's point of interconnection may not be on a transmission line.

(6) When a customer-generator facility is to be connected to 3 phase, 3 wire primary EDC distribution lines, a 3 phase or single-phase generator shall be connected phase-to-phase.

(7) When a customer-generator facility is to be connected to 3 phase, 4 wire primary EDC distribution lines, a 3 phase or single phase generator will be connected line-to-neutral and will be effectively grounded.

(8) This Level 2 screen includes a review of the type of electrical service provided to the interconnection customer, including line configuration and the transformer connection to limit the potential for creating over voltages on the EDC's electric distribution system due to a loss of ground during the operating time of any anti-islanding function.

(9) When the proposed small generator facility is to be interconnected on single-phase shared secondary line, the aggregate generation capacity on the shared secondary line, including the proposed small generator facility, will not exceed 20 kW.

(10) When a proposed small generator facility is single-phase and is to be interconnected on a center tap neutral of a 240 volt service, its addition may not create an imbalance between the two sides of the 240 volt service of more than 20% of the nameplate rating of the service transformer.

(11) A small generator facility, in aggregate with other generation interconnected to the distribution side of a substation transformer feeding the circuit where the small generator facility proposes to interconnect, may not exceed 2 MW in an area where there are known or posted transient stability limitations to generating units located in the general electrical vicinity (for example, three or four distribution busses from the point of interconnection).

(12) Except as permitted by an additional review under the standard small generator interconnection agreement, no construction of facilities by an EDC on its own system will be required to accommodate the small generator facility.

(c) The Level 2 interconnection procedure must consist of the following:

(1) An EDC shall, within 10 business days after receipt of the interconnection request, inform the applicant that the interconnection request is complete or incomplete and what materials are missing.

(2) When an EDC determines additional information is required to complete an evaluation, the EDC shall request the information. The time necessary to complete the evaluation may be extended, but only to the extent of the delay required for receipt of the additional information. The EDC may not revert to the start of the review process or alter the interconnection customer's queue position.

(3) When an interconnection request is complete, the EDC shall assign a queue position. The queue position of the interconnection request shall be used to determine the potential adverse system impact of the small generator facility based on the relevant screening criteria. The EDC shall schedule a scoping meeting to notify the interconnection customer about other higher-queued interconnection customers on the same substation bus or spot network for which interconnection is sought.

(4) Within 20 business days after the EDC notifies the interconnection customer it has received a completed interconnection request, the EDC shall:

(i) Evaluate the interconnection request using the Level 2 screening criteria.

(ii) Review the interconnection customer's analysis, if provided by interconnection customer, using the same criteria.

(iii) Provide the interconnection customer with the EDC's evaluation, including a comparison of the results of its own analyses with those of interconnection customer, if applicable. When an EDC does not have a record of receipt of the interconnection request and the applicant can demonstrate that the original interconnection request was delivered, the EDC shall expedite its review to complete the evaluation of the interconnection request within 20 business days of the applicant's resubmittal.

(5) Upon notice within 10 business days after receipt of the certificate of completion, the EDC may conduct a witness test at a mutually convenient time. If the EDC does not conduct the witness test within 10 business days or within the time otherwise mutually agreed to by the parties, the witness test is deemed waived.

(d) When an EDC determines that the interconnection request passes the Level 2 screening criteria, or fails one or more of the Level 2 screening criteria but determines that the small generator facility can be interconnected safely and reliably, it shall provide the interconnection customer a standard small generator interconnection agreement within 5 business days after the determination.

(e) Additional review may be appropriate when a small generator facility has failed to meet one or more of the Level 2 screens. An EDC shall offer to perform additional review to determine whether minor modifications to the electric distribution system would enable the interconnection to be made consistent with safety, reliability and power quality criteria. The EDC shall provide the applicant with a nonbinding, good faith estimate of the costs of additional review and minor modifications. The EDC shall undertake the additional review or modifications only after the applicant consents to pay for the review and modifications.

(f) An interconnection customer shall have 30 business days or another mutually agreeable time frame after receipt of the standard small generator interconnection agreement to sign and return the agreement. When an interconnection customer does not sign the agreement within 30 business days, the interconnection request will be deemed withdrawn unless the interconnection customer requests to have the deadline extended. The request for extension may not be unreasonably denied by the EDC. When construction is required, the interconnection of the small generator facility will proceed according to any milestones agreed to by the parties in the standard small generator interconnection agreement. The interconnection agreement may not become final until:

(1) The milestones agreed to in the standard small generator interconnection agreement are satisfied.

(2) The small generator facility is approved by electric code officials with jurisdiction over the interconnection.

(3) The interconnection customer provides a certificate of completion to the EDC. Completion of local inspections may be designated on inspection forms used by local inspecting authorities.

(4) There is a successful completion of the witness test, unless waived.

(g) If the small generator facility is not approved under a Level 2 review, the interconnection customer may submit a new interconnection request for consideration under a Level 3 or Level 4 interconnection review; however, the queue position assigned to the Level 2 interconnection request shall be retained.

**§ 75.39. Level 3 interconnection review.**

(a) Each EDC shall adopt the Level 3 interconnection review procedure in this section. An EDC shall use the Level 3 review procedure to evaluate interconnection requests that meet the following criteria and for interconnection requests considered but not approved under a Level 2 or a Level 4 review if the interconnection customer submits a new interconnection request for consideration under Level 3:

(1) The small generator facility has an electric nameplate capacity that is 2 MW or less.

(2) The small generator facility is less than 2 MW and not certified.

(3) The small generator facility is less than 2 MW and noninverter based.

(b) The Level 3 interconnection review process shall consist of the following:

(1) By mutual agreement of the parties, the scoping meeting, interconnection feasibility study, interconnection impact study or interconnection facilities studies under Level 3 procedures may be waived.

(2) Within 10 business days from receipt of an interconnection request, the EDC shall notify the interconnection customer whether the request is complete. When the interconnection request is not complete, the EDC shall provide the interconnection customer a written list detailing information that shall be provided to complete the interconnection request. The interconnection customer shall have 10 business days to provide appropriate data to complete the interconnection request or the interconnection request will be considered withdrawn. The parties may agree to extend the time for receipt of the additional

information. The interconnection request shall be deemed complete when the required information has been provided by the interconnection customer, or the parties have agreed that the interconnection customer may provide additional information at a later time.

(3) When an interconnection request is complete, the EDC shall assign a queue position. The queue position of an interconnection request shall be used to determine the cost responsibility necessary for the facilities to accommodate the interconnection. The EDC shall notify the interconnection customer at the scoping meeting about other higher-queued interconnection customers.

(4) A scoping meeting will be held within 10 business days, or as agreed to by the parties, after the EDC has notified the interconnection customer that the interconnection request is deemed complete, or the interconnection customer has requested that its interconnection request proceed after failing the requirements of a Level 2 review or Level 4 review. The purpose of the meeting must be to review the interconnection request, existing studies relevant to the interconnection request, and the results of the Level 1, Level 2 or Level 4 screening criteria.

(5) When the parties agree at a scoping meeting that an interconnection feasibility study shall be performed, the EDC shall provide to the interconnection customer, no later than 5 business days after the scoping meeting, an interconnection feasibility study agreement, including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study.

(6) When the parties agree at a scoping meeting that an interconnection feasibility study is not required, the EDC shall provide to the interconnection customer, no later than 5 business days after the scoping meeting, an interconnection system impact study agreement, including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study.

(7) When the parties agree at the scoping meeting that an interconnection feasibility study and system impact study are not required, the EDC shall provide to the interconnection customer, no later than 5 business days after the scoping meeting, an interconnection facilities study agreement including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study.

(c) An interconnection feasibility study must include the following analyses for the purpose of identifying a potential adverse system impact to the EDC's electric distribution system that would result from the interconnection:

(1) Initial identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection.

(2) Initial identification of any thermal overload or voltage limit violations resulting from the interconnection.

(3) Initial review of grounding requirements and system protection.

(4) Description and nonbinding estimated cost of facilities required to interconnect the small generator facility to the EDC's electric distribution system in a safe and reliable manner.

(5) When an interconnection customer requests that the interconnection feasibility study evaluate multiple potential points of interconnection, additional evaluations may be required. Additional evaluations shall be paid by the interconnection customer.

(6) An interconnection system impact study is not required when the interconnection feasibility study concludes there is no adverse system impact, or when the study identifies an adverse system impact, but the EDC is able to identify a remedy without the need for an interconnection system impact study.

(7) The parties shall use a form of interconnection feasibility study agreement approved by the Commission.

(d) An interconnection system impact study must evaluate the impact of the proposed interconnection on the safety and reliability of the EDC's electric distribution system. The study must identify and detail the system impacts that result when a small generator facility is interconnected without project or system modifications, focusing on the adverse system impacts identified in the interconnection feasibility study; or potential impacts including those identified in the scoping meeting. The study must consider all generating facilities that, on the date the interconnection system impact study is commenced, are directly interconnected with the EDC's system, have a pending higher queue position to interconnect to the system, or have a signed interconnection agreement.

(1) An interconnection system impact study must:

(i) Consider the following criteria:

(A) A short circuit analysis.

(B) A stability analysis.

(C) Voltage drop and flicker studies.

(D) Protection and set point coordination studies.

(E) Grounding reviews.

(ii) State the underlying assumptions of the study.

(iii) Show the results of the analyses.

(iv) List any potential impediments to providing the requested interconnection service.

(v) Indicate required distribution upgrades and provide a nonbinding good faith estimate of cost and time to construct the upgrades.

(2) A distribution interconnection system impact study shall be performed when a potential distribution system adverse system impact is identified in the interconnection feasibility study. The EDC shall send the interconnection customer an interconnection system impact study agreement within 5 business days of transmittal of the interconnection feasibility study report. The agreement will include an outline of the scope of the study and a good faith estimate of the cost to perform the study. The study must include:

(i) A load flow study.

(ii) An analysis of equipment interrupting ratings.

(iii) A protection coordination study.

(iv) Voltage drop and flicker studies.

(v) Protection and set point coordination studies.

(vi) Grounding reviews.

(vii) Impact on system operation.

(3) The parties shall use an interconnection impact study agreement or a distribution interconnection impact study as approved by the Commission.

(e) The interconnection facilities study shall be conducted as follows:

(1) Within 5 business days of completion of the interconnection system impact study, a report will be transmitted to the interconnection customer with an interconnection facilities study agreement, which includes an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study.

(2) The interconnection facilities study shall estimate the cost of the equipment, engineering, procurement and construction work, including overheads, needed to implement the conclusions of the interconnection feasibility study and the interconnection system impact study to interconnect the small generator facility. The interconnection facilities study must identify:

(i) The electrical switching configuration of the equipment, including transformer, switchgear, meters and other station equipment.

(ii) The nature and estimated cost of the EDC's interconnection facilities and distribution upgrades necessary to accomplish the interconnection.

(iii) An estimate of the time required to complete the construction and installation of the facilities.

(3) The parties may agree to permit an interconnection customer to separately arrange for a third party to design and construct the required interconnection facilities. The EDC may review the design of the facilities under the interconnection facilities study agreement. When the parties agree to separately arrange for design and construction, and to comply with security and confidentiality requirements, the EDC shall make all relevant information and required specifications available to the interconnection customer to permit the interconnection customer to obtain an independent design and cost estimate for the facilities, which must be built in accordance with the specifications.

(4) Upon completion of the interconnection facilities study, and with the agreement of the interconnection customer to pay for the interconnection facilities and distribution upgrades identified in the interconnection facilities study, the EDC shall provide the interconnection customer with a standard small generator interconnection agreement within 5 business days.

(5) The parties shall use an interconnection facility study agreement approved by the Commission.

(f) When an EDC determines, as a result of the studies conducted under Level 3 review, that it is appropriate to interconnect the small generator facility, the EDC shall provide the interconnection customer with a standard small generator interconnection agreement. If the interconnection request is denied, the EDC shall provide a written explanation.

(g) Upon providing notice within 10 business days after receipt of the certificate of completion, the EDC may conduct a witness test at a mutually convenient time. If the EDC does not conduct the witness test within 10 business days, or within the time otherwise mutually agreed to by the parties, the witness test is deemed waived.

(h) An interconnection customer shall have 30 business days, or another mutually agreeable time frame after receipt of the standard small generator interconnection

agreement to sign and return the agreement. When an interconnection customer does not sign the agreement within 30 business days, the interconnection request will be deemed withdrawn unless the interconnection customer requests to have the deadline extended. The request for extension may not be unreasonably denied by the EDC. When construction is required, the interconnection of the small generator facility shall proceed according to milestones agreed to by the parties in the standard small generator interconnection agreement. The interconnection agreement may not be final until:

(1) The milestones agreed to in the standard small generator interconnection agreement are satisfied.

(2) The small generator facility is approved by electric code officials with jurisdiction over the interconnection.

(3) The interconnection customer provides a certificate of completion to the EDC. Completion of local inspections may be designated on inspection forms used by local inspecting authorities.

(4) There is a successful completion of the witness test, unless waived.

**§ 75.40. Level 4 interconnection review.**

(a) Interconnection customers desiring to interconnect a small generator facility that does not qualify for a Level 1 or Level 2 review may request to be evaluated under Level 4 procedures.

(b) When an interconnection request is complete, the EDC shall assign a queue position. The queue position of each interconnection request will be used to determine the potential adverse system impact of the small generator facility based on the relevant screening criteria. The EDC shall schedule a scoping meeting to notify the interconnection customer about other higher-queued interconnection customers on the same substation bus or area network to which the interconnection customer seeks interconnection.

(c) When an interconnection customer submits an interconnection request to be interconnected to the load side of an area network, the EDC, notwithstanding any conflicting requirements in IEEE Standard 1547, shall use the following procedures:

(1) When a small generator facility is less than or equal to 10 kW, the EDC shall use the review procedures for a Level 4 review, when the small generator facility meets the following criteria:

(i) The electric nameplate capacity of the small generator facility is equal to or less than 10 kW.

(ii) The proposed small generator facility utilizes a certified inverter-based equipment package for interconnection.

(iii) The customer-generator installs reverse power relays or other protection functions, or both, that prevent power flow beyond the point of interconnection.

(iv) The aggregated other generation on the area network does not exceed 5% of an area network's maximum load.

(2) Construction of facilities by the EDC on its own system is not required to accommodate the small generator facility.

(3) The proposed small generator facility meeting the criteria under paragraph (1) shall be presumed appropriate for interconnecting to an area network and shall be further evaluated by the EDC based on the following procedures:

(i) The EDC shall evaluate an interconnection request under Level 1 interconnection review procedures. The EDC shall have 20 business days to conduct an area network impact study to determine potential adverse impacts of interconnecting to the EDC's area network.

(ii) When an area network impact study identifies potential adverse system impacts, the EDC may determine that it is inappropriate for the small generator facility to interconnect to the area network and the interconnection request shall be denied. The interconnection customer may elect to submit a new interconnection request for consideration under Level 3 procedures. The queue position assigned to the Level 4 interconnection request shall be retained.

(iii) An EDC shall conduct the area network impact study at its own expense.

(4) When an EDC denies an interconnection request, the EDC shall provide the interconnection customer with a copy of the area network impact study and a written justification for denying the interconnection request.

(5) When a small generator facility is greater than 10 kW and equal to or less than 50 kW, an EDC shall use the review procedures set forth for a Level 4 application to interconnect a small generator facility that meets the following criteria:

(i) The electric nameplate capacity of the small generator facility is greater than 10 kW and equal to or less than 50 kW.

(ii) The proposed small generator facility utilizes a certified inverter-based equipment package for interconnection.

(iii) The customer-generator installs reverse power relays or other protection functions that prevent power flow beyond the point of interconnection.

(iv) The aggregated other generation on the area network does not exceed 5% of an area network's maximum load.

(6) Construction of facilities by the EDC on its own system is not required to accommodate the small generator facility.

(7) The proposed small generator facility meeting the criteria under paragraph (5) shall be presumed to be appropriate for interconnecting to an area network and shall be further evaluated by an EDC using the following procedures:

(i) An EDC shall evaluate the interconnection request under Level 2 interconnection review procedures. The EDC shall have 25 calendar days to conduct an area network impact study to determine any potential adverse impacts of interconnecting to the EDC's area network.

(ii) When an area network impact study identifies potential adverse system impacts, an EDC may determine that it is inappropriate for the small generator facility to interconnect to the area network and the interconnection request shall be denied. The interconnection customer may elect to submit a new interconnection request for consideration under Level 3 procedures. The queue position assigned to the Level 4 interconnection request shall be retained.

(iii) An EDC shall conduct the area network impact study at its own expense.

(iv) When an EDC denies an interconnection request, the EDC shall provide the interconnection customer with a copy of its area network impact study and a written justification for denying the interconnection request.

(d) When interconnection to circuits that are not networked is requested, upon the mutual agreement of the EDC and the interconnection customer, the EDC may use the Level 4 review procedure for an interconnection request to interconnect a small generator facility that meets the following criteria:

(1) The small generator facility has an electric nameplate capacity of 2 MW or less.

(2) The aggregated total of the electric nameplate capacity of all of the generators on the circuit, including the proposed small generator facility, is 2 MW or less.

(3) The small generator facility uses reverse power relays or other protection functions that prevent power flow onto the utility grid.

(4) The small generator facility will be interconnected with a radial distribution circuit.

(5) The small generator facility is not served by a shared transformer.

(6) Construction of facilities by the EDC on its own system is not required to accommodate the small generator facility.

(e) When a small generator facility meets the criteria under subsection (d), an EDC shall interconnect under the Level 4 review if it meets the following requirements:

(1) A proposed small generator facility, in aggregation with other generation on the distribution circuit, may not contribute more than 10% to the distribution circuit's maximum fault current at the point on the primary voltage distribution line nearest the point of common coupling.

(2) The aggregate generation capacity on the distribution circuit to which the small generator facility shall interconnect, including its capacity, may not cause any distribution protective equipment, or customer equipment on the distribution system, to exceed 85% of the short-circuit interrupting capability of the equipment. A small generator facility may not be connected to a circuit that already exceeds 85% of the short circuit interrupting capability.

(3) When there are known or posted transient stability limits to generating units located in the general electrical vicinity of the proposed point of common coupling, the proposed customer-generator shall be subject to a Level 3 review.

(4) When a customer-generator facility is to be connected to 3-phase, 3 wire primary EDC distribution lines, a 3-phase or single-phase generator shall be connected phase-to-phase. When a customer-generator facility is to be connected to 3-phase, 4 wire primary EDC distribution lines, a 3-phase or single phase generator shall be connected line-to-neutral and shall be effectively grounded. This review must include examination of the type of electrical service provided to the interconnection customer, including line configuration and the transformer connection, to limit the potential for over voltages on the EDC's electric distribution system due to a loss of ground during the operating time of any anti-islanding function.

(f) When a small generator facility fails to meet the criteria under subsection (e), an EDC shall use the Level 3 interconnection procedures. The queue position assigned to the Level 4 interconnection request shall be retained.

(g) When a small generator facility satisfies the criteria under subsection (e), an EDC may, upon providing reasonable notice, within 10 business days after receipt of the Certificate of Completion, conduct a witness test at a mutually convenient time. If the EDC does not conduct the witness test within 10 business days or within the time otherwise mutually agreed to by the parties, the witness test is deemed waived.

(h) When a small generator facility satisfies the criteria for a Level 4 Interconnection, an EDC shall approve the interconnection request and provide a standard interconnection agreement to the interconnection customer for signature.

(i) The interconnection customer shall have 30 business days, or another mutually agreeable time frame after receipt of the standard small generator interconnection agreement to sign and return the agreement. If the

interconnection customer does not sign the agreement within 30 business days, the interconnection request shall be deemed withdrawn unless the parties mutually agree to extend the time period for executing the agreement. After the agreement is signed by the parties, interconnection of the small generator facility will proceed according to milestones agreed to by the parties in the agreement. The agreement may not be final until:

(1) The milestones agreed to in the standard small generator interconnection agreement are satisfied.

(2) The small generator facility is approved by electric code officials with jurisdiction over the interconnection.

(3) The interconnection customer provides a certificate of completion to the EDC. Completion of local inspections may be designated on inspection forms used by local inspecting authorities.

(4) There is a successful completion of the witness test, unless waived.

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